

W. Howard Davis.

Jan. 30. 1908.

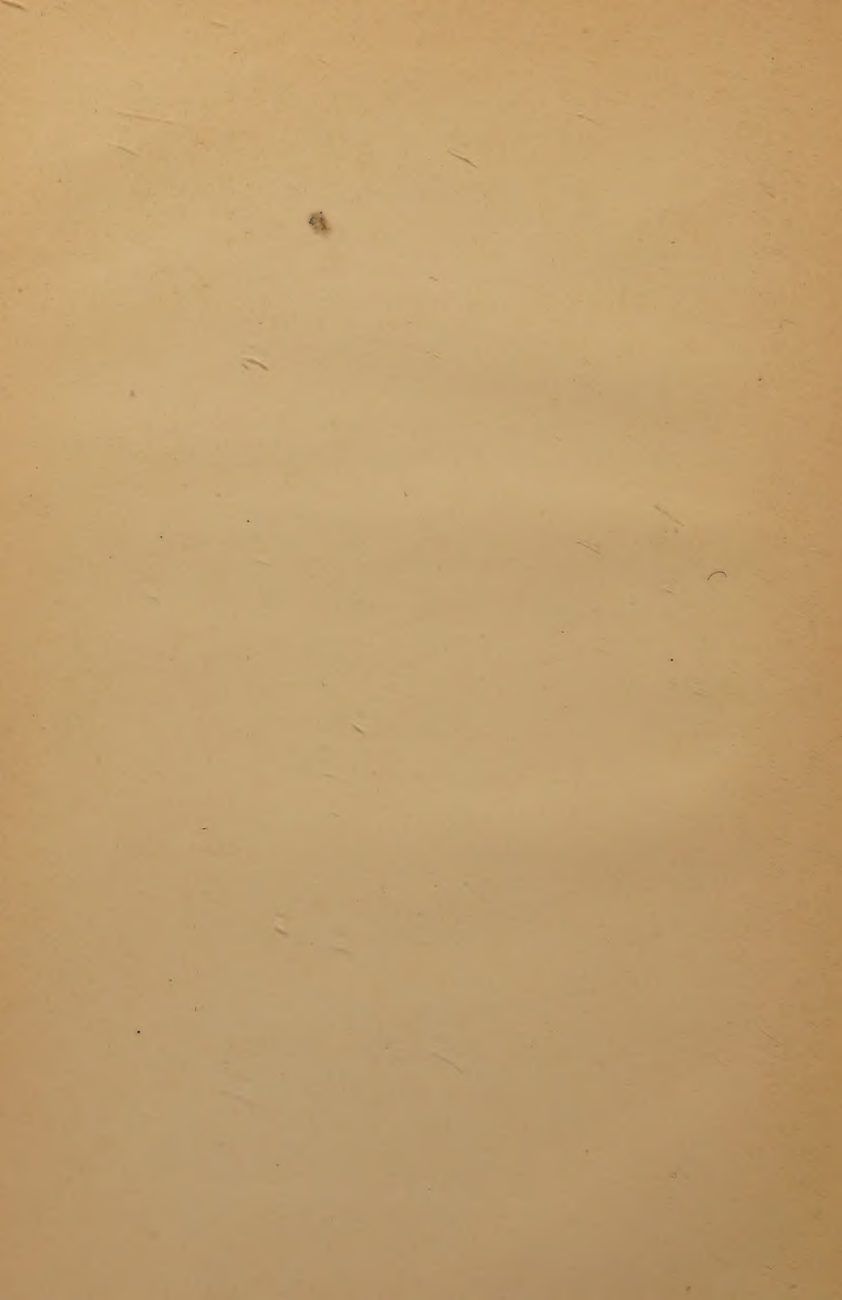
Presented To

Robert E. Wilcox.

By

Rev. P. C. M. Open





# THE LAW

OF

## The Protestant Episcopal Church

A MANUAL

FOR RECTORS, WARDENS AND VESTRYMEN

WITH FORMS

BY

GEO. H. HUMPHREY

COUNSELLOR-AT-LAW

SECOND EDITION.

New York

JAMES POTT & CO., PUBLISHERS

14 AND 16 ASTOR PLACE

1889

Press of J. J. Little & Co.  
Astor Place, New York.



## PREFACE.

---

IN presenting this little book to the Churchmen of New York, the writer trusts that he has supplied a real want. He has endeavored to present clearly, and in a concise form, those legal questions which are of most frequent inquiry at vestry meetings. While claiming nothing original for the work, he believes that, although omitting some subjects of rare occurrence, he has presented in an inexpensive form all practical matters likely to engage attention in the ordinary conduct of the business of the Church. It embodies also the very latest legislation and decisions on the important subjects considered.

ROCHESTER, N. Y., *October 6, 1887.*



# TABLE OF CONTENTS.

---

## CHAPTER I.

### OF THE INCORPORATION OF CHURCHES.

	PAGE
The benefits of incorporation.....	I
The corporators.....	3
The notice.....	4
Hour of meeting.....	4
The meeting.....	6.
Who may vote.....	7
The questions to be decided.....	9
Election, how conducted.....	10
Certificate of election, how made.....	11
How long the office of wardens and vestrymen continues.....	11

## CHAPTER II.

### OF ELECTIONS.

When held.....	13
Notice of.....	13
The qualifications of voters.....	13
How conducted.....	15
Power of presiding officer.....	15
The certificate.....	15
Of vacancies, how occasioned.....	16
How vacancies may be supplied.....	17

## CHAPTER III.

### OF THE VESTRY.

Of whom it consists.....	18
Their power to call a rector.....	18

	PAGE
To have a common seal .....	19
Their custody of the temporalities of the church.....	20
Their authority to sue.....	21
The office a trust.....	22
Power over church buildings .....	22
Power to make rules and regulations.....	22
Power to appoint officers .....	22
They have no power to divert church revenues.....	23

## CHAPTER IV.

### OF THE RECTOR.

A constituent part of the vestry.....	27
Is called for life .....	27
Connection with parish, how dissolved....	27
His rights.....	27
Salary cannot be reduced .....	29
His right to a hearing if charges are preferred.....	31
Right to preside at vestry meetings.....	31
Has casting vote.....	31
His exclusive power over church buildings.....	33
His authority over the music.....	34
No assistant minister may be called except by him.....	35
The assistant subject to his control.....	36
His duty.....	37
No right to leave his congregation .....	37

## CHAPTER V.

### OF VESTRY MEETINGS.

No legal action except at meeting regularly called.....	38
The notice.....	38
The quorum.....	40
What constitutes a majority.....	41
What constitutes a legal meeting.....	41
The presiding officer ...	42
Business, how conducted .....	42

# TABLE OF CONTENTS.

vii

	PAGE
No power to dismiss rector.....	43
Canon on that subject.....	44

## CHAPTER VI.

### POWER OF THE VESTRY OVER THE REAL ESTATE OF THE CORPORATION.

To sell it.....	47
To mortgage it.....	48
Sale, how effected.....	48
What petition must contain.....	48
How verified.....	49
Their power over the pews.....	49
Of pew rentals.....	50
The rights of pew owners.....	51

## CHAPTER VII.

### OF MISCELLANEOUS PROVISIONS.

Of changing number of vestrymen.....	56
Resolution for that purpose.....	56
How notice to be given.....	56
Action of corporation.....	57
The certificate.....	57
Of changing the name.....	57
Meetings for that purpose.....	57
Petition and its contents.....	58
Of consolidation of churches.....	59
Action of the vestry.....	59
The agreement.....	59
The approval.....	59
The petition.....	60
The order of the Court.....	60

## CHAPTER VIII.

### OF DIOCESAN TRUSTEES.

Laws of 1876 giving certain powers.....	62
Trustees of Parochial Fund in the Diocese of Western New York.....	64



	PAGE
Trustees of Diocese of Central New York.....	66
Conveyance to trustees in Diocese of Western New York. ....	69
Board of Missions of Diocese of Albany.....	74
Trustees of the Estate of the Diocese of Long Island.....	76

## CHAPTER IX.

## OF TAXATION.

Churches exempt from .....	78
But subject to taxation for local improvements.....	79
What churches are exempt.....	79
Clergymen exempt from .....	81

## CHAPTER X.

## OF PUBLIC WORSHIP.

Free exercise of religious profession.....	83
No persons to be debarred from it by threats.....	84
The disturbance of public worship.....	85
The power of the officers of the church to preserve order.....	86

## CHAPTER XI.

## OF MARRIAGE.

The rector's duty by canon law.....	88
The rector's duty by statute law.....	88
Deposition may be required .....	89
The rector's record and certificate .....	91
The certificate as evidence.....	91
The penal code .....	92
The age at which marriage may be contracted.....	92

## APPENDIX,

## WITH FORMS.

Form No. 1. Notice of meetings to incorporate society.....	93
“ 2. Certificate of incorporation .....	93

# TABLE OF CONTENTS.

ix

	PAGE
Form No. 3. Notice of election .....	95
“ 4. Certificate of election.....	95
“ 5. Petition to change name.....	96
“ 6. Order of Court thereon.....	97
“ 7. Petition for sale of lands .....	98
“ 8. Order of sale .... .	100
“ 9. Agreement for consolidation.....	101
“ 10. Petition for consolidation.....	103
“ 11. Order for consolidation .. .	104
“ 12. Certificate of change in number of vestrymen...	106
“ 13. Certificate of marriage.....	107
“ 14. Deposition of applicant for same .....	108
“ 15. Notice of meeting to convey lands to Trustees of the Parochial Fund.....	108
“ 16. Certificate of action of electors.....	109
“ 17. Of deed to trustees.....	110
“ 18. Petition of Trustees of Parochial Fund to convey property.....	111
“ 19. Order of sale thereon.....	113



# THE LAW

OF THE

## PROTESTANT EPISCOPAL CHURCH.

---

### CHAPTER I.

#### OF THE INCORPORATION OF CHURCHES.

WHILE any number of persons may assemble for public worship in accordance with the rites and usages of the Protestant Episcopal Church, it is necessary, in order to secure to them the full privileges of an organized Church, including the power to induct a rector, to elect wardens and vestrymen, to hold real estate, to use a seal, and to maintain an action for the protection of their rights, that they be incorporated under the laws of the States, which with few exceptions throughout the Union make full provision for that purpose.

The benefits of the incorporation are obvious, and consist, 1st, in the protection of the members

of the congregation from personal liability for the debts of the Church ; 2d, the light of the statute law which clearly defines and regulates the duty of the corporate body ; and, 3d, convenience in carrying on and promoting the work of the parish.

Says Chancellor Kent : " It was chiefly for the purpose of clothing bodies of men in succession with the qualities of one single artificial and fictitious being that corporations were originally invented, and for the same convenient purpose they have been brought largely into use. By means of the corporation many persons are capable of acting in perpetual succession like one single individual, without incurring any personal hazard or responsibility, or exposing any other property than what belongs to the corporation in its legal capacity."

2 *Comm.*, 268.

In order to give an organization for public worship legal rights, and to impose on it legal obligations as a corporate body, there must be a special law declaring its existence, or there must be an incorporation under the provisions of the general law relating to religious societies.

*Petty v. Tooker*, 21 *N. Y., R.*, 267, 271.

*Van Buren v. Church*, 62 *Barb.*, 495.



### The Corporators.

“ It shall be lawful for not less than six male persons, of full age, belonging to any church or congregation in communion with the Protestant Episcopal Church in this State, not already incorporated, to meet at any time at the usual place of worship of such church or congregation, for the purpose of incorporating themselves.”

2 *R. S. Banks & Bros.*, 7 *Ed.*, p. 1654.

It will be seen that the persons attending the meeting for the purposes of incorporation must be—

1st. Not less than six in number.

2d. Males of the age of twenty-one years and upward, and

3d. Must belong to a church or congregation *in communion with* the Protestant Episcopal Church.

If, as seldom happens, the parties intending to form the corporation are not already members of the religious body named, or are organizing a church in a place where there was before no Episcopal Society, it would be proper for them to apply to the Bishop or Standing Committee of the diocese to be received into such communion, and they could probably take no further legal action until such recognition was granted.

The statute requires them "to meet at their usual place of public worship." It is necessary, therefore, that they secure a building, hall, or room, and conduct divine service there in accordance with the usages of the Church for a period long enough to make it "their usual place of worship." The meeting of the corporators must be held at such place, and it should be occupied for that purpose probably for two or three months, or certainly long enough to satisfy the terms of the statute.

Any building, room, hall, or compartment will be sufficient as a place for conducting such service.

### The Notice.

"A notice of such meeting, specifying its object and the time and place thereof, shall be publicly read in the time of morning service on two Sundays next previous thereto, by the rector or officiating minister, or, if there be none, by any other person belonging to such church or congregation; and shall also be posted in a conspicuous place on the outside door, near the main entrance to such place of public worship."

(As to the notice, see Form No. 1.)

The hour when the meeting shall be held is not

fixed by law, but it should be at a seasonable and convenient hour during the day or early evening.

It is an excellent custom to hold it immediately after Morning Prayer, when the mind is fresh and unwearied, and a spirit of kindness and harmony has been evoked by the solemn influence of the early service.

The place of meeting must be that commonly used for public worship, whether it be only a single room where two or three have been wont to assemble for religious service, or the church edifice already built.

The notice must be not only read, but posted in a conspicuous place on the outside door, near the main entrance to the place of worship.

An election on any day other than that named in the certificate of incorporation is wholly illegal, and the persons then chosen are not a vestry either *de jure* or *de facto*. The vestry of the then expiring year will be still in office, and the only persons empowered to transact the business of the society.

*First Church, etc., v. Hillary, 51 Cal., 155.*

An election held on the same day, but before the hour specified in the notice, would doubtless be unlawful. But if held a few minutes after, or even an

hour after, it would probably, by analogy to other cases, be sustained. It certainly would be, if no one was deceived as to the time. As if the rector having another engagement at the hour noticed, should leave some one at the place of election to notify all comers that it would take place at any time within an hour later. But any *material* variance in the time would in any event be fatal to the validity of the election.

*Reynolds v. McElhone*, 20 *How. Pr.*, 454.

### The Meeting.

At the time and place specified, at least six persons, including the rector, if there be one, must be present, or there will be no quorum sufficient to continue the work of organization. But it would be competent for a less number to adjourn the meeting to such time during the day or evening as might be necessary to secure a sufficient attendance.

If the requisite number is present, the rector, if there be one, or, if there is no rector, then one of the church wardens or vestrymen, or other person called to the chair, shall preside at such meeting, and receive the votes. As soon as the assembly is

called to order, a clerk should be appointed to keep the minutes of the meeting, and prepare the necessary records. It is made the duty of the presiding officer "to receive the votes." This must incidentally give him power to appoint the tellers, and to reject any illegal ballot.

### Who May Vote.

The persons entitled to take part in the meeting must be males of full age belonging to the church or congregation, qualified as follows:

1st. They must have been baptized in the Protestant Episcopal Church, or have been received therein by the rite of Confirmation or by receiving the Holy Communion ; or,

2d. Must have purchased, and for not less than twelve months next prior to such meeting have owned, a pew or seat in such church ; or, during the same period of time, have hired and paid for a pew or seat in such church ; or, during the whole period aforesaid, have been contributors in money to the support of such church.

Any person of full age belonging to the congregation, if he was baptized in the Protestant Episcopal Church, or has been received therein by the rite of Confirmation, or by partaking of the Holy



Communion, may vote without further qualification.

But if not a communicant, or so baptized, he must have owned either a pew or seat in said church for twelve months; or, during the same time, have hired and *paid for* a pew or seat in said church; or, during all that time have been a contributor in money to the support of such church.

The contributions required must have been habitual, and for the use and support of the religious incorporation itself.

It is the duty of the presiding officer to see that none but legal votes are received; but, if they have been received without objection, they cannot afterward be questioned.

*Hartt v. Harvey*, 22 Barb., 55.

The receipt of illegal votes, too, if challenged, will not avoid the action of the corporators, unless enough shall be received to change the result.

*The People v. Tuthill*, 31 N. Y. R., 550.

An election or other action of the corporators will not be set aside and declared void merely because illegal votes are received from persons not entitled to vote, if there is still a majority of legal votes in favor of the same.

### The Questions to be Decided.

The persons so qualified shall decide by a majority of votes :

1st. The name or title by which such church or congregation shall be known at law.

2d. On what day in Easter week an annual election for church wardens and vestrymen shall thereafter take place.

3d. What number of vestrymen, not less than four or more than eight, shall annually be elected, and shall, together with the rector (if there be one), and the two church wardens, constitute the vestry of the church.

4th. And shall by a majority of votes elect two church wardens and the number of vestrymen that it shall have been determined to be annually elected, which church wardens and vestrymen thus elected shall serve until the next regular election.

The meeting should first determine by a majority of votes what number of vestrymen, not less than four or more than eight, shall annually be elected. This may be by motion or *viva voce* vote, as the term vote signifies merely an expression of the will of the meeting, and the statute does not require a *written* vote, that is, a ballot.

It might be more convenient, also, to determine

in the same way, the name of the church, and the day in Easter week on which the annual election shall be thereafter held.

It would seem, however, more satisfactory to elect the officers of the church by ballot, as that course has received the sanction of long and almost invariable custom, and leaves greater freedom for the expression of the wishes of those present.

No one is eligible to the office of warden or vestryman unless also qualified to vote at such election, as it cannot be that the law would permit lower qualifications for those intrusted with the government of the parish than it requires from those by whom they are chosen.

A majority of all the votes cast is necessary to elect. In the event of more than two tickets being submitted to the electors, a plurality of votes in favor of either would not be sufficient, and a new election would have to be called.

The polls must, in any event, be kept open for an entire hour, and, if the presiding officer or a majority of those present so elect, for a longer period.

As soon as may be after the polls are closed, the presiding officer and two other persons shall make a certificate under their hands and seals setting forth particularly the action of the meeting, and

showing that all things required by the statute were carried out.

(For form of certificate, see No. 2.)

When the certificate has been signed and sealed by the rector, or other presiding officer, and two voters selected by him for that purpose, it must be acknowledged before a notary public or other qualified officer, and recorded with the clerk of the county in which such meeting was held. It should, although not required by law, be entered by the clerk of the vestry in his minutes.

“The church wardens and vestrymen so elected, and their successors in office, of themselves (but if there be a rector, then together with the rector of such church or congregation) shall form a vestry, and shall be the trustees of such church or congregation; and they and their successors shall thereupon be a body corporate by the name or title expressed in such certificate.”

*2 Laws of 1868, ch. 803, p. 1801, § 8.*

Their office continues not only until the expiration of the year for which they are chosen, but also until their successors are duly elected.

When the incorporation shall be complete by recording the certificate, a certified copy thereof

should be sent to the bishop of the diocese for his approval, which he will indorse thereon. If there be a vacancy in the episcopate, then it should be forwarded to the Standing Committee of the diocese, and the approval of a majority of such committee indorsed upon it. Upon presenting the certificate to the next Convention of the diocese, the church is entitled to be received into communion therewith, and to be represented at its sessions by the rector and by three lay delegates chosen according to the rules of the respective dioceses, in some cases by the congregation, but usually by the vestry.



## CHAPTER II.

### OF ELECTIONS.

THE annual elections for church wardens and vestrymen shall be held at the time in Easter week set forth in the certificate of incorporation, and immediately after morning service.

Notice of the election must be given by the rector, if there be one, or if there be none, or he be absent, by the officiating minister, or by a church warden, for two Sundays next previous to the day so fixed, in the time of divine service, and must specify the place, day, and hour of holding morning service, and that the election will take place immediately thereafter.

The qualifications of voters are the same as those required of corporators, except that every voter must have belonged to such church or congregation *for an entire year*. The obvious purpose of the statute is to secure the government and control of the temporalities of the corporations formed under it to such of its members and supporters as should manifest their attachment to its tenets and their in-

terest in its success by their habitual presence and countenance, and their habitual contributions to its support. Absence from the church, occasioned by long-continued sickness, by a protracted foreign tour, or similar cause, would not disfranchise a member if there was an intention of resuming membership upon recovery or at the end of the journey. The question, like that applicable to civil elections, would depend upon the intention of the elector. If it was his intention to sever his membership with the parish, his right to vote would doubtless be gone; but if it was his purpose to return and resume his membership, his rights as an elector would remain unimpaired.

Habitual attendance, however, at the services of another congregation would seem to be conclusive against the right to vote, especially in the case of one not contributing habitually to the support of the church.

The election must be holden immediately after morning service, and a variance of a few minutes from the time specified in the notice would not be material. The polls must be kept open for one hour, and, in the discretion of the rector, or if required by a majority vote of those present, for a longer period.

At every election, the rector, if there be one, or if there be none, or he be absent, one of the church wardens, selected for the purpose by a majority of the duly qualified voters present; or if no warden be present, a vestryman (selected in like manner), shall preside and receive the votes of the electors, and be the returning officer, and shall enter the proceedings in the book of minutes of the vestry, and sign his name thereto, and offer the same to as many electors present as he shall think fit (usually two), to be by them also signed and certified.

The presiding officer has the direction of the election, or, in the words of the statute, "receives the votes." The meaning of this is that he has the general supervision of the election. He appoints the tellers, has power to reject an illegal vote, and the vote by his direction is counted, and the result announced. He also is the returning officer, and at the conclusion of the election enters the proceedings in the book of minutes of the vestry (practically, however, this is usually done by the clerk of the vestry, by his direction), and asks as many electors present as he shall see fit (not less than two) to sign it also.

(See Form No. 4.)

This certificate is good evidence of the elec-

tion, although executed many months after it was held.

*People v. Peck, 11 Wend., 604.*

The rector has, of course, the same right to vote as any other member of the congregation, he being the only judge as to its expediency.

Should not the vote result in an election, or if, as sometimes happens, there is a tie between one or more candidates on opposing tickets, at any time before the polls are formally closed, another election may be had. No voter can be deprived of a vote by this course, as it is in his power, and should be his duty, to remain until the polls are closed.

If votes are received by the tellers without challenge or objection, they cannot afterward be questioned.

*Hartt v. Harvey, 32 Barb., 55.*

### Of Vacancies.

A vacancy in the vestry may be created by the death of a warden or vestryman, by his change of residence, *cum animo manendi*, from the place in which the church is located, or by his written or verbal resignation presented to and *accepted by* the vestry. A resignation presented and read, if it receives no formal acceptance, will not avail to create

a vacancy. The trustee may not relinquish his trust without the consent of the vestry.

*Council v. Dutch Ch., etc.*, 4 *Lans.*, 339; 54 *N. Y. R.*, 551.

A vacancy in the vestry can only be filled by a special election ordered for that purpose by the vestry. Notice of it shall be given in the time of divine service at least ten days prior thereto. It must be holden immediately after morning service, and is subject to precisely the same regulations as to the mode of conducting it, and the qualifications of voters which govern the general annual elections.

### CHAPTER III.

#### OF THE VESTRY.

THE vestry consists of the rector, the two wardens and the vestrymen, not less than four nor more than eight, as determined at the time of the incorporation of the society. They are the trustees of the church or congregation, to whom is confided the entire management of its temporalities.

#### **Their Powers.**

1st. They are authorized to call and induct a rector of the church as often as there shall be a vacancy therein, and to fix his salary or compensation.

This should always be done by written resolution for that purpose, carefully and clearly expressing the terms of the relation to be assumed, the amount of his salary, and when it shall be payable. The clerk should be authorized to transmit it, and the proceedings fully entered in the minutes of the vestry. As this is the most important act likely to be performed by the governing body, too much care cannot be exercised in fully and distinctly expressing

in writing the terms of the call, so that there need be thereafter no question on that subject.

2d. To have and use a common seal, and renew and alter the same at pleasure.

A seal is an impression upon wax, wafer, or some other tenacious substance capable of being impressed, and a common seal is simply one adopted by the vestry. They may adopt by resolution and make their own any seal whatever, if it be only a piece of white paper attached by wafer or mucilage to the instrument. But an ordinary scrawl such as "L.S." is not sufficient in the State of New York.

*Warren v. Lynch*, 5 J. R., 238.

Not only is it incident to the corporation to have a common seal, but it may make or use what seal it will. Accordingly it was held in the reign of Edward III. that if an abbot and convent sealed a writing with the seal of a layman, and it was said in the deed "in testimony whereof our common seal is affixed," it was sufficient; for they might change their common seal when they would. But to bind the corporation by deed, the instrument must be sealed with a seal which is theirs either originally or by adoption.

*Angel and Ames on Corporations*, 185.

*Congregation v. Church*, 10 How. Pr. R., 484.



In the Southern and Western States, from New Jersey inclusive, a flourish with a pen at the end of a name or a circle of ink, or a scroll, has been held to be a valid substitute for a seal.

4 *Kent's Comm.*, 445.

The organization will not be invalidated by the accidental loss of the seal required to be attached to the certificate of incorporation. Parol proof will be competent to show that it was affixed at or prior to the execution of the instrument.

*Medan v. Sherard*, 73 *N. Y. R.*, 323.

I know of only two cases where the use of a seal will be necessary. It must be affixed to the certificate of incorporation when an ordinary seal is attached after the name of each signer; and the corporate seal will be required should it become necessary to convey real estate of the corporation.

It will be seldom necessary, therefore, to incur the expense of a corporate seal.

3d. To take into their possession and custody all the temporalities belonging to such church, whether the same consist of real or personal estate, and whether the same shall have been given, granted or devised directly to such church, or to any other person for their use; and also by their corporate

name (that is, the Rector, Wardens and Vestrymen of \_\_\_\_\_ Church, in the \_\_\_\_\_ of \_\_\_\_\_), to sue and be sued in all courts of law or equity, and to recover, hold and enjoy all debts, demands, rights and privileges, and all churches, meeting-houses, parsonages, and burying-places, with the appurtenances, and all estates belonging to such church, congregation or society, in whatsoever manner the same may have been acquired, or in whose name soever the same may be held, as fully and amply as if the right or title thereto had been originally vested in said trustees, and to purchase and hold other real estate, and to demise, lease and improve the same for the use of such church, congregation or society.

But aside from property used exclusively for religious purposes, they may not hold more than enough to yield an annual income of \$6,000.\*

It is needless to say that the property must be managed solely for the use and benefit of the church, and in accordance with the rites and usages of the Protestant Episcopal Church. No warden or vestryman can lawfully derive any pecuniary benefit to himself from its management, but the law will re-

---

\* "But by Laws of 1889, chap. 191, they are authorized to hold property not exceeding in value \$2,000,000, and whose yearly income does not exceed \$100,000."

quire him to act unselfishly, and with an eye single to the interests of the parish. The rule emphatically applies, that "He who acts for another shall not in the same matter act for himself." The office is purely a trust, to be exercised solely for the promotion of the interests of religion, as administered by the religious body to which the parish belongs. Any violation of the trust would be restrained and punished by the court.

4th. They have power to repair and alter their churches, to erect others if necessary, to erect rectories for the use of their ministers, and school-houses or other buildings for the use of the society.

This provision would doubtless authorize the erection of guild-houses, of coffee-rooms, and of places for the recreation and improvement of the young people of the parish. They may exercise a wide discretion in this respect, and the courts would doubtless sanction any work whereby the usefulness of the parish would be promoted and extended.

5th. They may make rules and orders for managing the temporal affairs of the church, dispose of all moneys belonging thereto according as the best interest of the church may require, regulate and order the renting of pews, and all other matters relating to the temporal concerns and revenues of the church.

6th. They shall have power to appoint a clerk

and treasurer of their board, and a collector to receive and collect their revenues; to regulate the fees to be allowed each of them, and in the absence of any definite contract for a specified time, to remove either of them at pleasure.

Any proceedings to recover or affecting the title to real or personal property should be in the name of the rector, church wardens and vestrymen of the church. To them alone is entrusted the care of the temporalities of the parish, and they may even institute proceedings to sell the church edifice, without consulting the members of the congregation.

*Church v. Church*, 46 *N. Y. R.*, 131.

It must always be borne in mind, however, that neither the congregation nor vestry has power to divert the church property from the dissemination of the teachings of the Protestant Episcopal Church as defined in the Book of Common Prayer and the authorized standards of that body, or employ it in conducting any service foreign to its well-settled rules and discipline.

*Miller v. Benson*, 69 *Ill.*, 27.

*Deiderick v. Sampson*, 11 *Heisk.*, 523.

*Miller v. Gable*, 2 *Den.*, 492.

*Kinkead v. McKee*, 9 *Barb.*, 535.

*Isham v. Dunkirk*, 63 *How. Pr.*, 465.

*Watson v. Jones*, 13 *Wall.*, 680.

They cannot sever their connection with the church or unite with any other religious organization, or become independent, save at the expense of impairing their title to all the trust property.

*Jones v. Wadsworth*, 11 *Phila. R.*, 227.

Any threatened diversion of the revenues of the society, either to maintain a clergyman who has been deposed by proper authority, or for any use inconsistent with the purpose for which it was originally acquired, will be restrained by the courts. And any member of the corporation may maintain an action for that purpose.

*Church v. Bowden*, 14 *Abb. N. C.*, 356.

*Isham v. Tallinger*, *Id.*, 363.

In the State of New York the principle is affirmed by statute (*Laws of 1876*, p. 142, *ch.* 176), which provides that it shall not be lawful to divert the estate, property or revenue of the corporation to any purpose "except the support or maintenance of any church, or religious or benevolent institution, or object connected with the church or denomination to which such corporation shall belong."

But it is equally well settled that the courts will not interfere with the constituted authorities of the church in matters peculiarly within their jurisdic-

tion. Their power is limited to the protection of the civil rights of the corporators and corporation, and to the preservation of the public peace. As to all questions relating to the faith and practice of the church and its members, they will refuse to interfere, but leave the same to those church judicatures to which the parties have voluntarily submitted themselves. They will pass upon them only when necessary to determine the rights of property, or other civil rights dependent upon them.

*Grimes v. Harmon*, 35 Ind., 198.

So where a clergyman was charged with the offense of omitting the words "regenerate" and "regeneration," in administering the sacrament of infant baptism, it was held that the secular courts would not inquire whether the omission was an offense against the laws of the Church. That was a question of ecclesiastical cognizance alone. The Church should make and construe its own laws, and enforce its own discipline. A rector has not such a vested right in his office, such a property in the right to preach and the emoluments pertaining thereto, as will authorize the civil courts to interfere on that ground to restrain an ecclesiastical court in his trial for an alleged offense against the

canons and discipline of the Church. The contract of employment and for his salary must be construed and enforced in reference to the canons which form a part of it. If he is suspended, his salary is gone.

*Chase v. Cheney, 58 Ill., 509.*



## CHAPTER IV.

### OF THE RECTOR.

THE rector is a constituent part of the vestry, is its presiding officer, and no legal meeting can be held without his presence, unless he shall himself have called it in writing, or unless he has been absent from the State at least four months. But in no case whatever, during his absence, can any action be taken to dispose of the lands of the parish, to sell any part of the capital or principal of its personal estate, or tending to impair the rights of such rector.

2 *R. S.*, 1656, § 15.

In the absence of an express agreement to the contrary, the rector is called for life, and is entitled to hold the office while he lives, at the salary originally promised him, without diminution. His connection with the parish can only be dissolved either by his own voluntary act or his deposition by the bishop of the diocese for immoral conduct, or teaching inconsistent with his ordination vows. The law guards jealously his rights, and will not

permit him to be oppressed, or his salary reduced by a factious or discontented congregation. He is entitled at all times to enter the church for the performance of his duties, and to control its use. He may also, like any other individual, sue for and recover his salary if not promptly paid to him.

*Ebaugh v. G. R. Church, 3 E. D. S., 60.*

The courts bear in mind the fact that one who gives up his life to the work of the ministry, and whose thoughts must, exactly in proportion to his fidelity to his great work, be withdrawn from secular pursuits, needs special protection, and ought not to be dependent for a livelihood on the whims and prejudices of his congregation.

The subject was very thoroughly discussed in *Youngs v. Ransom, 31 Barb., 49*, and the court say: "Mr. Ransom was not called, nor did he agree to preach to this church for a year, or for any specified time, nor at the will of the church or vestry. He was called to take charge of the parish as rector, and settled as such. It is not, and cannot be denied, that the rule or regimen of the Episcopal Church as to the tenure of its parish ministers is that when they have once been placed in charge of congregations, they can neither leave nor be dis-

missed, except by mutual consent, without the intervention of the bishop. Without discussing the power to make, or the propriety of, agreements for the performance of clerical service, limited in time, I think it very clear that when a minister is called or settled in an Episcopal parish without any such limitation, he can only be dismissed, or sever the connection by mutual consent, or by superior ecclesiastical authority on the application of one of the parties. The 33d Canon of the General Convention of 1832 is very explicit to this effect."

I cannot find that the case of *Youngs v. Ransom* has ever been criticised or questioned, and it must be held to settle the law, at least in the State of New York.

The vestry cannot indirectly remove their rector by a reduction of his salary.

The point was expressly adjudged in *Bird v. St. Mark's Church*, 62 *Iowa Rep.*, 567. The action was brought by the rector of St. Mark's Church, Waterloo, to recover the salary originally promised to him, which the vestry, by resolution, had sought to diminish, and the court says: "The salary upon which the plaintiff was employed, constitutes an essential part of the contract. If the defendant could be permitted to reduce the plaintiff's salary

without his consent, it could force him to agree to a dissolution of the pastoral relation, and thus accomplish indirectly what it could not do directly. The right to the salary stipulated at the time the plaintiff accepted the position of rector is a valuable property right secured to the plaintiff by a contract. One party to a contract cannot ignore its provisions or violate them with impunity."

To the same effect is *Batterson v. Thompson*, 8 *Phila. R.*, 251. The rights of the rector were also maintained by the court in *Lynch v. Mensie*, 33 *N.J. Rep.* (4 *Vroom*), 162. In that case the vestry had, by fastening the doors of the church edifice and school-house, attempted to deprive the rector of their use. He brought the action to recover damages for the wrong, and a jury awarded him one thousand dollars. The appellate court, in affirming the judgment, says: "If, then, we adopt the theory of the English cases, and I perceive no reason for rejecting it, that for the purposes of the exercise of his sacerdotal functions, the rector *becomes possessed* of the church buildings and grounds, it will be difficult to devise any pretext in denial of the right of such officer to a civil remedy, if such possession be invaded. Nor does the right of redress for an interference with his rights seem less

clear if we adopt the hypothesis that, by force of his position, plaintiff was possessed of an easement in the premises."

It would seem to follow that as no man can be deprived of a right or subjected to a penalty without an opportunity to be heard in his own defense, if charges are brought against him, they should be regularly presented in writing, and before any prejudicial action is had, he should be permitted to refute any testimony that may be produced against him. That every man is presumed to be innocent until proved guilty applies to him with peculiar force, and the burden of proof must of course rest with the presenters.

Says Hoffman, page 269: "When the sanction of the ecclesiastical authority (he is speaking of the dismissal of a clergyman) is sought, a duty is imposed as well as a power conferred. It cannot concur upon any *ex parte* statements without an examination. The right to be heard is a common-law right, and must be observed before any penalty of any description can be lawfully inflicted."

The rector is not only presiding officer at all meetings of the vestry, but has a right to vote upon all questions there presented. He may have also a right in the event of a tie to have the casting vote,

and thus in effect vote twice. The section of the act which provides that the rector, or one of the church wardens, must preside at every meeting of the board, and have the casting vote, is to be construed as authorizing the chairman, after having voted first with the rest, upon a tie occurring, to emphasize his vote by repeating it. The very question arose in *People v. Rector, etc.*, 48 Barb., 603. There eight vestrymen and two wardens had assembled for the purpose of calling a rector. Five voted in favor of engaging the relator as rector, and five, including the presiding officer, voted against it. He thereupon declared the resolution to be lost. It was held that such declaration amounted to a casting vote, the resolution was not carried, and hence that the relator was not legally called to the rectorship of the church.

At all elections the rector is both the presiding and the returning officer, and his certificate of election is presumptive evidence of the right of the party receiving it to hold the office and exercise its functions.

*People v. Lacoste*, 37 N. Y. R., 192.

The call of a clergyman is simply a contract, which requires only a meeting of minds, the concurrence of the vestry on the one part and the min-

ister on the other. No formality or ceremony is necessary for that purpose, although for greater certainty it is expedient that the action be in writing and entered on the minutes of the vestry.

The rector has exclusive power over the church edifice, as to granting or refusing its use for public worship or any other purpose. This follows necessarily from the nature of the pastoral charge. He is called to be a teacher of spiritual things. The cure of souls is committed to him, and, as a necessary result, he alone shall determine to whom such trust shall be confided during his absence. By Canon 31 of 1832 it is provided that no clergyman shall officiate in his parish without his express consent. Hence the vestry may not interfere with his rights in that respect. He has also power to control the use of the church at other times and on every day. He may forbid it to be used for church fairs, for secular entertainments, for lectures, or any purpose inconsistent with religious uses. In the institution office the keys are delivered to him as a symbol of the delivery of the church edifice itself, and the inference is irresistible that *virtute officii*, he has absolute control of it. The church is simply an instrument of his office, committed to him to consecrate it to the Lord, to offer in it the sacrifice of

praise and thanksgiving, to teach and celebrate in it the sacraments of our holy religion. Its direction is intrusted to him for that object, and it is his duty to see that it is sacredly and exclusively devoted thereto, and kept free from all unhallowed, ordinary and common uses.

The same rule must apply to the other buildings used by the church for the instruction of the young, for guilds, and other ecclesiastical purposes.

*Hoffman's Law of the Church, 85.*

The direction of the music used in the church is committed to the rector. Canon 22 provides:

“§ I. The selection of the psalms in metre and the hymns which are set forth by authority, and anthems in the words of Holy Scripture, are allowed to be sung in all congregations of this Church before and after Morning and Evening Prayer, and also before and after sermons at the discretion of the minister, whose duty it shall be, by standing directions, or from time to time, to appoint such authorized psalms, hymns, or anthems as are to be sung.”

“§ II. It shall be the duty of every minister of the Church, with such assistance as he may see fit to employ from persons skilled in music, to give orders concerning the tunes to be sung at any time



in his church, and especially it shall be his duty to suppress all light and unseemly music, and all indecency and irreverence in the performance by which vain and ungodly persons profane the service of the sanctuary."

While the salary and terms of employment of the choir belong exclusively to the vestry to determine, the direction of the choir belongs to him. He must determine as to rehearsals, and as to the character of the music. It is simply an auxiliary to his work, and therefore must be entirely under his control. It is the better opinion that he may select the persons composing the choir, and it is certain that any question as to whether it should be a surpliced choir, a quartet, or chorus, belongs to him.

No assistant minister may be called without his consent; while the vestry must be consulted as to the necessity or utility of calling an assistant, and must decide as to the terms and period of employment, the rector must be permitted to determine the question who shall be selected as a worthy coadjutor, and fitted to aid him in his most important work. There can be but one rector, and it is eminently proper that he should not be hampered in his office by one likely perhaps to mar, impair, or destroy his usefulness, and upon that most delicate

of questions he must, in the nature of things, be the best and only judge.

The term "assistant rector," is unknown to the common law, although in one single instance, *sui generis*, it appears in a legislative enactment. By chapter 120, of the *Laws of N. Y. for 1878*, provision is made for an associate rector of St. Paul's Church, Buffalo, by which he was made a member of the vestry, and authorized to preside in the absence of the rector at meetings of the vestry and at elections. He was also empowered to call meetings. But it was provided that at those so called no action should be taken to dispose of the real estate, to sell personal property except to pay debts, or to impair in any manner the rights of the rector.

The fact that a special act was required defining his duties would seem to indicate that in all things, as the necessity of the case requires, the assistant minister is subordinate to the rector, and subject to his direction, unless in a special case special legislation may be necessary to change the rule. There cannot be two chiefs either in the family or in that larger family which we call a church. Nor is there any law authorizing the assistant minister to act as a member of the vestry, or to preside at its meetings.

### His Duty.

This branch of the subject needs but few words, and is best expressed in the office of the ordering of priests, in which he promises "so to minister the Doctrine and Sacraments, and the Discipline of Christ, as the Lord hath commanded, and as this Church hath received the same, according to the Commandments of God."

As Hoffman says with great power, "The vow of the rector becomes the right of the congregation" (page 87). This right is violated if he teaches or allows another to teach an anti-trinitarian doctrine, or other dogma opposed to the plain teachings of the Book of Common Prayer.

He has no right to leave his congregation against their will without the consent of the Bishop, although the only penalty incurred by such action is exclusion from the privileges of the Convention of the diocese.

*Title II., Canon 4.*

It is needless to say that in all spiritual matters the rector must, from the very nature of his office, have in his parish supreme control. He is not subject to the dictation of the vestry, and the supreme impropriety on their part of any attempt to influ-

ence his teaching is too obvious to need comment. To him has been committed authority to feed and guide the flock entrusted to his care, and his right to teach and direct them may not be questioned by all or any of the members of his charge. This has been the study of his life. To qualify him for it, he has received the most careful training, and as well might the patient seek to instruct the trained physician, or the client his counsel learned in the law. Should he urge any doctrine inconsistent with the plain teaching of Scripture or the Prayer-Book, it would be the duty of the Bishop, upon proper proceedings prescribed by the canons of the Church, upon complaint duly presented to him, to investigate the matter. But no one else may assume to take action on the subject. To the rector the sacred trust has been given by the Church of God to bring all committed to his care "into that agreement in the faith and knowledge of God, and to that ripeness and perfectness of age in Christ, that there be no place left in them for error in religion or for viciousness of life." To this his all has been consecrated, and no man may interfere with the discharge of this solemn office and work of a priest in God's Church save the Bishop only whom he has vowed reverently to obey, "following with a glad mind all

his godly admonitions, and submitting to his godly judgment."

It would be well always to remember that to the rector has been given authority "to execute the office of a Priest in the Church of God," once committed to him by the imposition of divinely constituted hands, with power "to preach the word of God, and to minister the Holy Sacraments in the congregation to which he has been lawfully called."

Would that those who are inclined to criticise or oppose their duly appointed pastor might be induced reverently to read the office "for the ordering of priests" and learn how solemn and important is the office committed to his charge, and how thoroughly and entirely it has been entrusted to him.

## CHAPTER V.

### OF VESTRY MEETINGS.

NO legal action of a vestry can be had except at a meeting regularly called, or unless all the members of the vestry are present. If every member be present, as the only object of the notice is to secure such presence, the action of the meeting would doubtless be valid, although legal notice was not given. Each member of the vestry has a right to be consulted as to every proposed measure, and that right can only be waived by his failure to attend the meeting after being duly notified thereof.

*Constant v. Rector, etc., 4 Daly, 25.*

#### The Notice.

No meeting of the vestry shall be held unless at least three days' notice thereof shall be given, in writing, under the hand of the rector or one of the church wardens. This provision, however, does not apply to the first meeting after an election, when more haste is requisite, and twenty-four hours notice thereof shall be enough.

The notice of meetings subsequent to the first would not, perhaps, be necessary where the vestry have, by a by-law or resolution, fixed the time for meetings, as, for instance, the first Monday evening of the month. All members of the vestry are chargeable with notice of such resolution or by-law.

*Smith v. Lane*, 21 *N. Y. R.*, 296.

It is, however, the better practice if anything of moment is contemplated, to give the notice.

It may be sent by mail, and the law will presume its reception by the party to whom it is properly addressed.

*Cors v. Otis*, 100 *N. Y.*, 446.

But personal service at least three days before the meeting, if an important one, would save any question as to its legality. Should notice be mailed and not received, the meeting would not be legal without the personal presence of the person to whom it was addressed. If the person entitled to notice is present without it, in that case the purpose of the notice is answered, and no question arises on the subject.

A religious body is not bound by the acts of its trustees, acting personally, nor by the act of a majority of them convened together, unless such

convention is an authorized official meeting, pursuant to a call addressed to all the trustees.

*United Brethren Ch. v. Van Dusen*, 37 Wis., 54.

*St. Patrick's Ch. v. Gavalin*, 82 Ill., 170.

*Moore v. Rector*, 4 Abb. New Cas., 51.

*Bank v. St. Anthony's Church*, 109 N.Y. R., 512.

If all the members of the vestry are present, although no notice has been given, and proceed without objection to the transaction of business, the necessity of notice will be waived, and their action will be legal. But if any person not notified is absent, or, if present, objects to the legality of the meeting, all extraordinary proceedings are illegal. When some of those entitled to notice are present without it, and the others have had due notice, if they proceed to business it is a legal waiver of notice, the meeting is regular, and its action valid.

*Angel and Ames on Corporations*, 457.

### The Quorum.

No such board shall be competent to transact any business unless the rector, if there be one, at least one of the church wardens, and a majority of the vestrymen are present. But if the rector shall have been absent, from the State for four calendar months, or shall, in writing, have called the meeting and be absent, then, a warden and a majority of the vestry-



men being present, the board may transact any business not involving a disposition of the property of the corporation, or tending to impair the rights of the rector.

To constitute a legal board there must be present the rector, a warden, and a majority of the vestrymen, except when the rector shall have been absent as above stated. "There are thus three integral parts of the body which personally, as in the case of the rector, or by representation, as in the cases of the wardens and vestrymen, must attend."

*Hoffman, 71.*

The majority of the vestry must be of the entire legal number, and not of those actually in office. Thus in the event of three of the vestrymen having resigned, when their number is eight, five would still be necessary to constitute a quorum.

The statute requiring a majority of the vestrymen contemplates a majority of the legal number, and not merely of a less number actually in office.

*Moore v. Rector, etc., 4 Abb. N. C., 51.*

No legal meeting can be held—

1st. Where the rector is absent, unless he shall himself have called the meeting, or shall have been

for at least four calendar months absent from the State.

2d. When both wardens are absent.

3d. If less than a majority of the vestrymen are present.

### **The Presiding Officer.**

The rector, if there be one, and if not, then the church warden present, or if both church wardens are present, then the church warden who shall be called to the chair by a majority of the votes, shall preside.

### **Business : How Conducted.**

Each member of the vestry has a right to vote, and they are upon an equality of power as to every corporate resolution and act, except that the chairman has the casting vote. The vote of a majority of the members present will be absolutely controlling. Thus, if five vestrymen, a warden, and the rector are present, the united vote of any four of them would be sufficient to decide any measure proposed.

No valid act can be performed, not even that of adjourning the meeting, except by a majority of those present.

Business transacted at an irregular meeting, if

subsequently ratified and approved at a meeting duly called at which a quorum is present, will thereby become valid.

After the meeting has been duly organized, the withdrawal of the rector, or of a warden, or of a vestryman cannot prevent the completion of business already commenced, or even the transaction of new business; otherwise the rector, or warden, or vestryman would, by withdrawing, be able to defeat the voice of the majority, and in substance hold a veto on their action.

*Hoffman, page 77.*

The presiding officer is bound to submit every question presented for the consideration of the vestry. There can be no doubt of his obligation to do so in every case of a proposition properly within the province of the vestry to act upon. On the other hand, it is equally clear that he is not bound to put questions or resolutions to vote tending to censure or criminate himself.

While the vestry may call the rector, they can take no action for his dismissal, or, as such, investigate any charges against him. A clear majority of the adult male members of the church must concur in asking that the matter be presented to the bishop for his consideration.

A canon on the subject was adopted by the Convention of 1865, and is as follows:

“In case a minister who has been regularly instituted or settled in a parish or church be dismissed by such parish or church without the concurrence of the ecclesiastical authority of the diocese, the vestry, or congregation, of such parish or church shall have no right to a representation in the Convention of the diocese until they shall have made such satisfaction as the Convention may require; but the minister thus dismissed shall retain his right to a seat in the Convention, subject to the approval of the ecclesiastical authority of the diocese.”

“And no minister shall leave his congregation against their will without the consent of the ecclesiastical authority aforesaid; and if he shall leave them without such concurrence, he shall not be allowed to take his seat in any Convention of this Church, or be eligible into any church or parish until he shall have made such satisfaction as the ecclesiastical authorities of the diocese may require; but the vestry, or church shall not thereby be deprived of its right to a representation in the diocese.”

By Canon 4 of Title II. § 4, it is provided that in

case of any difference between the minister and parish, or vestry, as to severing or continuing the relation existing between them, which may not be satisfactorily settled by the godly judgment of the bishop alone, or which he may decline to consider without counsel, the bishop (or if the diocese be vacant, any bishop selected by the ecclesiastical authority), acting with the advice and consent of the Standing Committee of the diocese, or missionary jurisdiction, or with that of the presbyters of the said Standing Committee (if both parties shall assent to such limitation in writing), shall be the ultimate arbiter and judge, and refusal to accept and comply with the arbitration and judgment on the part of the minister aforesaid, shall not work a continuance of lawful and canonical rectorship or settlement beyond the date fixed conditionally or otherwise for its termination by such arbitration and judgment, should such termination be recommended and required, but such pastoral connection shall, unless otherwise agreed by the parties, cease and terminate as therein required. But such refusal shall subject the minister so refusing to inhibition by the bishop aforesaid from all ministerial offices and functions within the diocese, and such refusal on the part of a parish shall disqualify it from rep-

resentation in the Convention until full compliance with the judgment.

This canon, however, applies only to dioceses approving it, and having no other regulations on the subject.

## CHAPTER VI.

### OF THE POWER OF THE VESTRY OVER THE REAL ESTATE OF THE CORPORATION.

#### 1st. To Sell the Same.

THE vestry may, by order of the court, sell and convey the real estate of the corporation. This power belongs to the vestry, to whom the corporators intrusted the management of the temporalities of the church.

*Church v. Church*, 46 *N. Y. R.*, 131.

The conveyance can only be authorized for good reasons, showing that the corporation will be benefited thereby. The court has no power to approve a sale for the purpose of closing up the existence of the society and distributing its property. The trustees have no power to do this, and the court cannot enlarge their powers. The court cannot approve of any plan for the application of the proceeds of the sale of real estate which does not regard the interests of the society as an organization, to continue for the purposes of its creation.

*Wheaton v. Gates*, 18 *N. Y. R.*, 395.

The weight of authority seems to indicate that the vestry may mortgage the property without an order of the court for that purpose.

*Manning v. Society, etc.*, 27 Barb., 52.

*Baptist Society v. Clapp*, 18 Barb., 35.

Still, this right has been questioned, and it would probably be safer to apply to the court for authority to make the mortgage.

The sale must be authorized by a majority vote of the vestry at a meeting regularly called for that purpose.

The petition must

1st, be addressed to a justice of the Supreme Court, or to the County Court of the county in which the land sought to be sold is located, and entitled as in Form No. 5.

2d. Must be in the name of the rector, church wardens and vestrymen, or if there be no rector, must set forth that fact, and be in the name of the church wardens and vestrymen.

3d. It must aver the incorporation of the society.

4th. Their ownership of the property; and

5th. Must set forth the reasons which render a sale expedient; and

6th. Ask for an order authorizing the sale and



directing what disposition shall be made by the vestry of the proceeds.

It may be verified by the rector, or any one else cognizant of the facts, and is usually signed by the rector, wardens, and vestrymen. The clerk, however, or any other suitable person, may by resolution be authorized to sign and present the petition on behalf of the vestry. The petition in that case should state the fact. The court may in its discretion grant the order, and the deed executed in pursuance thereof should recite the order and the facts giving the court jurisdiction to make it.

(See Forms Nos. 6, 7 and 8 for petition, order, and conveyance.)

### **Of the Pews.**

By the laws of 1876, ch. 176, it is provided that "the rector, church wardens, and vestrymen of any church incorporated under the laws of this State shall administer the temporalities thereof, and hold and apply the estate and property belonging thereto, and the revenues of the same, for the benefit of such corporation according to the rules and usages of the church or denomination to which said corporation shall belong, and it shall not be lawful to divert such estate, property or revenue to any

purpose except the support and maintenance of any church or religious or benevolent institution or object connected with the church or denomination to which such corporation shall belong."

"Each and every of the corporations aforesaid may receive, use and apply all rents and means derived from pews of the respective churches, in addition to the annual income, limited by any statute now in force relating thereto."

The renting of the pews will be generally conducted by a committee appointed by the vestry for that purpose, and may be verbal if for not more than one year, although it would be better if by an agreement printed or written for that purpose. The following brief form would be sufficient :

"The vestry of St. ——— Church have leased to ——— pew No. —, or — sitting in pew No. —, for which he agrees to pay to the treasurer of said church \$—— per annum, payable quarterly in advance. Dated ———.

Signed by \_\_\_\_\_

Chairman of Committee and Lessee of Pew.

The leasing, if for a definite time, will be binding on the parties for that period, but if no time is expressed in the contract, possession of the pew may be surrendered at the end of any quarter.

In some parishes in this State pews have been sold to and are owned by individuals, and were generally so conveyed subject to the payment of an annual assessment or rent, and in some cases without any condition whatever.

It is settled by many authorities that the owner of a pew has only a usufructuary interest ; that is, the right to use it. He may convey it by deed duly sealed and acknowledged, but will convey thereby only the privilege of occupying it ; his interest does not entitle him to an injunction restraining the trustees from pulling down the edifice and building a new one.

*Voorhees v. Church of Amsterdam*, 17 Barb., 103.

The pew owner takes a limited estate, a right to use the pew as long as the house may stand, subject to the more general right of the corporation in the soil and freehold.

*Shaw v. Beveridge*, 3 Hill, 26.

*Baptist Ch. v. Witherell*, 3 Paige, 302.

*Freleigh v. Platt*, 5 Cowen, 494.

*Haney v. St. Peter's Ch.*, 2 Ew. Ch. Rep., 608.

*Guy v. Baker*, 17 Mass. Rep., 435.

*Perrine v. Levitt*, 10 Id., 325.

If the edifice becomes useless from dilapidation,

or is destroyed by fire, or any casualty, the right of the pewholder is gone.

And so, if from decay, or other injury, the house has to be rebuilt; but, if for mere convenience or purposes of expediency only, and not from necessity, the pew is taken, the owner has a right to indemnity.

Neither the corporation nor the vestry can, for the purposes of mere improvement or embellishment, deprive the owner of his property—certainly not without compensation.

If, however, from the condition of the building or pew, the latter becomes useless, and it becomes necessary to rebuild the pews instead of repairing them, it may be done without compensation to the owner, and he cannot complain that another plan or arrangement of the pews is adopted.

It was held in *Cooper v. Presbyterian Church*, 32 Barb., 222, in an elaborate opinion by Bockes, J., that “a pew owner has no separate or individual property in the timber or materials out of which the house, or any of its parts, is composed, but his right is that of occupancy of the pew during public worship, and this right of occupancy must yield to circumstances of necessity, convenience, and expediency, growing out of the rights in common of the society.”

“These principles are the plain dictates of natural justice and cultivated reason, and are so eminently just in their application as to seem a necessary concomitant of church property in our country.”

It was held in *Bronson v. St. Peter's Ch.*, 3 *Law Rep.*, 390, that “the pew owner has no claim that the relative situation or internal position of the church pews will not be changed, nor that the church edifice shall remain unaltered.” In that case a motion was made by certain pew owners for an injunction to restrain the corporation from proceeding with a contemplated alteration which involved the demolition of their pews. Judge Maynard denied the motion, holding that the trustees, acting in behalf of the corporation, had the right to make alterations under Sec. 4 of our statute, which gives them power “to repair and alter their churches and meeting-houses, and to erect others if necessary.”

But it seems equally well settled that if the change is made merely for convenience, as if A owns the two front pews of the church edifice, and the vestry determined to extend the chancel, by reason of which improvement he is deprived of his pews, that he shall be entitled to indemnity, either by

having assigned to him two new pews, or by pecuniary compensation. An action would lie for damages under such circumstances, although the court would decline to grant an injunction restraining the proposed improvement.

*Hoffman's Law of the Church*, 245.

A pew holder has no such right in the pew, or the ground on which it stands, as will prevent the sale of the church edifice and soil, if the assent of the Supreme Court is obtained.

A sale or permanent lease of a pew is subject to this condition, and the purchaser takes with presumptive knowledge of and assent to the same.

*Wheeler v. Gale*, 18 *N. Y. Rep.*, 395.

The pew owner's right in a pew is an incorporeal hereditament, it is more than an easement, it is connected with the land, and has some of the qualities of realty. It passes to the heir-at-law.

3 *Kent's Com.*, 402.

It requires a writing under seal to pass the title.

*St. Paul's Ch. v. Ford*, 34 *Barb.*, 16.

*First Baptist Ch. v. Bigelow*, 16 *Wend.*, 28.

Owners of pews have an exclusive right to their

possession and occupation for purposes of worship. The remedy, by an action of trespass, for a disturbance of the owner in the possession of his pew is, therefore, the only appropriate remedy.

*Shaw v. Beveridge*, 3 *Hill*, 26.

## CHAPTER VII.

### OF MISCELLANEOUS PROVISIONS.

#### 1st. Of Changing the Number of Vestrymen.

THE number of vestrymen cannot be less than four nor more than eight, but may be changed to any number, between three and nine, by the following action:

At any regular meeting of the vestry a resolution may be adopted to change the number of vestrymen to any number within the limit just named.

At the time notice of the annual election is given, there shall be added to it, as follows: "And at the same time a resolution adopted by the vestry of this church, at a regular meeting held on the day of                   , 18   , that the number of vestrymen thereof be changed from           to           will be submitted to the voters for their adoption or rejection."

At the time of the election the electors shall vote for or against it. If the resolution is adopted by a majority of the legal votes, a certificate shall be prepared setting forth the adoption of the resolu-



tion by the vestry, that notice was duly given of the submission of the same to the electors of the church, and that at the time of the election it was duly ratified and adopted by a majority or unanimous vote of those present.

(See Form of certificate No. 12.)

Such certificate shall be signed by the rector and two electors chosen by him for that purpose, who shall then acknowledge the same before a notary public or other officer authorized to take such acknowledgment.

Upon recording the certificate with the Clerk of the County wherein the church is located, the proposed change is effected.

## 2d. Of Changing the Name.

The corporation may, if for any reason its name has become incongruous or inconvenient, or in the event that the location or character of such corporation will be more correctly or effectually designated by such change, apply to the Court to alter the same.

The adult male members of the church, at a meeting regularly called for that purpose, and of which notice ought to be given on two successive Sundays prior thereto, may determine, by a major-

ity vote, to change the title of the church. The resolution should also authorize the rector, clerk, or other suitable person to prepare and present to the Court a petition for that purpose.

The person so authorized may thereupon present to a judge of the County or of the Supreme Court a verified petition setting forth :

- 1st. The incorporation of the religious society.
- 2d. The facts which render the corporate name incongruous or inconvenient, or the proposed name more suitable, and also that at a meeting of the corporators, regularly called for that purpose, a resolution was adopted by a majority vote (or unani- mously) directing the adoption of a new corporate title, and authorizing the petitioner to present the matter to the Court.

Also a prayer that the corporation be allowed to change their corporate title and assume a new one.

The officer to whom the petition is addressed, may thereupon grant an order directing the proposed change, and requiring the order to be inserted once in a newspaper recorded in the County.

When the order has been entered and published, upon filing proof of such publication, together with the petition, the corporate title is fully changed.

(See Forms Nos. 5 and 6.)

### 3d. Of the Consolidation of Religious Societies.

Any two religious incorporated societies may consolidate and unite as a single corporation—

1st. At a meeting of the vestry of each church, regularly called as required by law, a resolution should be adopted by each body authorizing the consolidation of the two societies, determining the name of the proposed new corporation, the names of those who shall be church wardens and vestrymen to serve until the next annual election, who shall be the rector, and any other terms which may be made part of the agreement.

The agreement may be signed by the rector, church wardens, and vestrymen, or by some person authorized by them to sign it.

It should then be acknowledged, and presented to the Bishop and Standing Committee of the Diocese for their approval. Upon the agreement should be indorsed, "We, the Bishop and Standing Committee, of the Diocese of — hereby approve the within agreement, and consent to the consolidation therein named, upon the terms therein also stated. Dated —."

This approval should be acknowledged, although not absolutely necessary.

Each of the said corporations may thereupon

make its separate petition to the Supreme Court in the judicial district in which such corporations are situated, for an order for such union and consolidation; setting forth in such petition the reason of such union and consolidation, the agreement made as herein before stated, its presentation to and approval by the Bishop and Standing Committee of the Diocese, a statement of all its property, real and personal, all its debts and liabilities, and the amount and sources of its annual income.

Upon such petition from each of said corporations so proposing to be united and consolidated, and upon the said agreement, satisfactorily proved or certified, the Supreme Court may, in case it shall deem it proper, make an order for the union and consolidation of such corporations, determining all the terms, and conditions, and provisions thereof.

All parties interested therein may be heard on such petition. Any person having an interest, and serving notice to that effect on the clerk of the vestry, would doubtless be entitled to notice of hearing.

When such order is made and entered according to the practice of the Court, the said corporations shall be united and consolidated into one corporation by the name designated in the order, and it

shall have all the rights and powers, and be subject to all the obligations of religious corporations under the act in reference thereto.

The order should be entered in the office of the Clerk of the County where the churches are located, and a certified copy entered in the minutes of the new vestry.

And thereupon all the estate, rights, and property of whatsoever nature belonging to either of said corporations shall, without further act or deed, be vested in and transferred to the new corporation as effectually as they were vested in or belonged to the former corporations, and the said new corporation shall be liable for all the debts and liabilities of the former corporations in the same manner and as effectually as if said debts or liabilities had been incurred by it.

*Laws of 1880, ch. 167.*

(See Forms 10 and 11.)

## CHAPTER VIII.

### OF DIOCESAN TRUSTEES.

By the Laws of 1876, chap. 110, it was provided that any “ *Diocesan Convention*, presbytery, classis, synod, annual conference, or other governing body having jurisdiction over a number of churches, congregations or societies of any church or religious denomination in this State, now or hereafter to be constituted or established, and not already incorporated, at any stated meeting thereof, by a plurality of voices to elect any number of discreet persons, not less than three nor exceeding nine in number, as trustees to take charge of the estate and property belonging thereto, and to transact all affairs relating to the temporalities thereof. The presiding officer and clerk of such governing body shall immediately thereafter certify, under their hands and seals, the names of the persons elected trustees as aforesaid, in which certificate the name or title by which the said trustees and their successors shall be known shall be particularly mentioned, which said certificate being duly acknowledged by the said

presiding officer and clerk, shall be recorded by the Clerk of one of the Counties situated in whole or in part within the bounds of the jurisdiction of such governing body, or in the book kept for the record of religious corporations; and such trustees and their successors shall thereupon, by virtue of this act, be a body corporate by the name or title expressed in such certificate."

POWERS OF TRUSTEES.—"§ 2. Such trustees shall be capable of taking, for religious, educational and charitable purposes, by gift, devise, bequest, grant, or purchase, and of holding and disposing of the same, any real and personal estate held for the benefit of any such governing body, or of any parish, congregation, society, church, chapel, mission, religious, benevolent, charitable or educational institution, existing or acting under such governing body at the time of their election, or which had then, or may thereafter be given for any such purposes, provided that the net yearly income received from the said property shall not at such time exceed the sum of \$25,000."

"§ 3. Whenever any church, parish or religious society in connection with any such governing body shall become extinct, or shall cease to maintain religious services therein for two consecutive years, by

reason of the death or removal of its members, or for any other cause, it shall be lawful for the trustees elected by such governing body as aforesaid to take possession of the temporalities belonging to such extinct church or society, and manage or dispose of the same, and apply the proceeds thereof to any of the objects mentioned in the second section of this act. The governing body to which such church or society belongs shall determine when any church or society has become extinct, or has ceased to maintain religious service for two consecutive years—provided that no church or society having more than thirteen resident members shall be declared extinct unless it has failed for two consecutive years to maintain religious service therein.”

“§ 4. The trustees elected by virtue of this act shall hold their offices at the pleasure of the governing body by whom they are elected, and all vacancies shall be filled by such body as they occur.”

## **2d. Of Trustees of the Parochial Fund.**

The Trustees of the Parochial Fund of the Protestant Episcopal Church in the Diocese of Western New York were incorporated March 26, 1863, by chapter 59 of the Laws of that year.

The trustees consist of six laymen holding office



for three years, of whom two are elected yearly by the Convention of the Diocese. The Bishop of the Diocese is *ex officio* a member of the board.

They are authorized by § 4 of the act to receive and hold by deed, conveyance, or last will and testament, for the accumulation of the Parochial Fund, real and personal estate to such an amount that the annual income thereof shall not exceed \$30,000, to be devoted equally to clerical support and the erection of parsonages.

They are also authorized by chapter 500 of the Laws of 1875 "to receive by donations, grant or devise real or personal property, and take and hold the same for the purposes of clerical support, parsonage aid in particular parishes, parochial and theological schools, and missions in said diocese, for a house or place of residence for the bishop of said diocese, or for any religious, charitable, or educational institution within said diocese, and they shall hold and apply the same in strict accordance with the conditions annexed to any such donation, grant or devise, if not incompatible with the laws of this State; and they may receive such donations, grant, gift, or devise when made to take effect upon any specified contingencies or conditions not repugnant to any law of this State; and in cases where the Bishop of the

Diocese has been heretofore, or shall be hereafter, made a testamentary trustee for any of the purposes contemplated by this act, he shall have the right to surrender the said trust to the trustees of this fund at will, and in case of his not doing so before his death, the said testamentary trust shall inure on his death to the trustees of this fund, subject to all the conditions prescribed by the donor ; but the annual income accruing from the property said trustees are allowed to hold by this and the 4th sections shall not exceed \$250,000.”\*

A similar body was organized at the creation in 1868 of the Diocese of Central New York, whose functions are clearly defined by the admirably drawn Act of 1887, chapter 106, as follows: “ They shall have power to take and receive by gift, grant, devise or bequest, any property real or personal, and hold the same ; *first*, in trust and for the use and benefit of any congregation or parish which may be incorporated and in union with the Convention of the Protestant Episcopal Church in the Diocese of Central New York ; or, *second*, in trust for the assistance or sup-

---

\* They were also, in 1888, clothed by the Legislature with the same powers as those conferred on the Trustees of the Diocese of Central New York, by the act hereinafter next quoted.

*Laws of 1888, ch. 308.*

port of any such mission or missionaries in said diocese as may be approved of by the bishop. The money or other property so used for missionary purposes to be expended under the general direction of the bishop thereof, or the bishop in council with the missionary board of said church in said diocese, or in case of vacancy in the bishopric, or an extended absence of the bishop, then under the general direction of the Standing Committee in said diocese ; or *third*, in trust to assist weak and feeble parishes in said diocese to support their ministers and Sunday-schools, or to build or repair their church edifices or parsonages; and *fourth*, in trust for the assistance or support of any parochial, divinity, or theological school, or any scholarship in any such school in said diocese which may be approved by the bishop ; or, *fifth*, to institute scholarships in St. John's Military School for Boys, which is an incorporated church school within said diocese, or otherwise to aid in the support of said school, or any successor thereof ; *sixth*, for the general use and purposes of the church in said diocese in cases where no special or particular use or purpose of the gift is attached thereto ; provided always that the trustees shall hold and invest or apply each fund, or the interest or income thereof, in strict accordance with the terms of the trust or

condition attached to it by the gift, grant, devise or bequest producing such fund, so that in no case shall the property given, granted, devised or bequeathed for one purpose or object be applied or used for another; and provided also that the net annual income of any fund shall not exceed the sum of \$30,000."

The act is a model one, and leaves nothing to be desired, so far as concerns the clear expression of the intention of the framers of the law, and its lucid and exact definition of the power and duty of the board.

A valuable function of the trustees in both dioceses is to hold church property for the benefit of any parish within the respective dioceses, and apply the same in strict accordance with the conditions annexed, to any such donation, grant, or devise.

Many vestries have availed themselves of the privileges of the act, and have conveyed their property to these boards. The object of the grant is to save the property from sacrifice or loss, by reason of any indebtedness, which may have been incurred by the improvident action of vestries.

The trustees may doubtless hold it free and clear from any indebtedness incurred after its conveyance. But as to existing creditors, it would seem that it could be granted only subject to the payment of their claims, and, as to them, must be presumed

fraudulent, and liable to be set aside upon action instituted for that purpose.

*Cole v. Tyler*, 65 *N. Y. R.*, 73.

The conveyance to the trustees should define carefully the conditions on which the property shall be held, and especially what disposition shall be made of it in the event that the congregation shall become extinct or depart from the usages or doctrine of the Protestant Episcopal Church.

### Conveyance to Trustees in the Diocese of Western New York.

By the laws of 1884, ch. 125, it is provided that after a resolution shall be passed by the vestry authorizing a conveyance or transfer of the real or personal property of the society to the "Trustees of the Parochial Fund of the Protestant Episcopal Church in the Diocese of Western New York," they shall call a meeting of the persons entitled to vote for church wardens and vestrymen of such society, to be held at the usual place of public worship of the congregation of such society, on some week day not less than twenty nor more than thirty days thereafter.

### How the Meeting is Called.

Such meeting shall be called by posting a notice thereof, in a conspicuous place, on the outer door of

such usual place of worship, at least twenty days before the day of such meeting; which notice shall specify the object of such meeting, and the time and place thereof, and shall contain a copy of the aforesaid resolution of the vestry.

A copy of such notice shall be publicly read in the time of morning service, on two Sundays next previous to the day of such meeting, by the rector or officiating minister, or, if there be none, by any member of the vestry of such religious society.

(For form of notice, see No. 15.)

ELECTION—HOW CONDUCTED.—The election is conducted precisely in the same manner as the annual election for wardens and vestrymen, with two exceptions: 1st. At such meeting the only question submitted to the electors is, "Shall the resolution of the vestry be approved?" which shall be decided by the voters by ballot, and by a majority of the votes cast, the ballots being inscribed either "for the resolution of the vestry" or "against the resolution of the vestry;" and 2d. That the entry of the proceedings on the minutes of the vestry shall be subscribed by the presiding officer and *three* others of the electors present.

### Certificate of Result.

In case a majority of the votes cast at such meeting shall be in the affirmative on said question, the presiding officer, together with not less than three others of the voters present, shall make a certificate under their hands and seals, stating that such meeting was duly held, the time and place of holding the same, the name of the presiding officer, and that such meeting was held in pursuance of the notice by which the same shall have been called as hereinbefore provided; and a copy of such notice shall be incorporated in such certificate. Such certificate shall also state the whole number of ballots cast at such meeting; what number of them was cast "for the resolution of the vestry," and what number was cast "against the resolution of the vestry." The said certificate shall be duly acknowledged by each of the persons subscribing the same, or its execution shall be duly proved before some officer authorized to take the acknowledgment or proof of deeds of real estate, and shall be recorded in the office of the Clerk of the County in which such meetings shall have been held.

(For form of certificate, see No. 16.)

Such certificate, or a duly certified copy thereof,

shall be presumptive evidence of the truth of all matters therein stated.

When the certificate shall be recorded as aforesaid, and a certified copy delivered to one of the vestry, it shall be the duty of the vestry to cause the property named in the certificate to be conveyed or transferred to the Trustees of the Parochial Fund aforesaid.

(For form of deed, see No. 17.)

The property is to be held by such trustees solely in trust for the use and benefit of the religious society making the conveyance or transfer; and shall not, therefore, be liable for any debt, obligation or liability of the society.

### **Power of Supreme Court to Order Sale.**

After one year from the time of the transfer or conveyance, the Supreme Court may, upon the application of the society made at any special term of said Court, order a sale by said trustees of such property, and direct the application of the proceeds of such sale as shall be most for the interest of such society.

### **Application—How Made.**

Such application shall be made upon the proof to the Court that the same has been authorized and



directed by a vote of a majority of the vestry of such society for whose benefit said property is held in trust, duly entered upon the minutes at a regular meeting thereof, and that such vote and authorization of said vestry has been approved and confirmed by a vote of not less than two-thirds of all such persons belonging to said society who shall attend the meeting as hereinafter provided who are lawful voters not only, but who shall have paid not less than ten dollars during the preceding twelve months to the support of such society. The meeting shall be called and conducted, and a record of its proceedings kept, and a certificate thereof made and recorded in the same manner as was required for the transfer and conveyance of such property to said trustees.

(For form of petition and order, see Nos. 18 and 19.)

Section 9 provides that "the said certificate when recorded as aforesaid, or a certified copy thereof, under the hand and seal of said County Clerk, shall be delivered to one of the members of the Trustees of the Parochial Fund, and it shall thereupon be the duty of the said trustees to convey and transfer the property, real and personal, so held by them in trust, and to apply the proceeds

thereof pursuant to and in compliance with the terms and directions of the order of the Court made in reference thereto."

While the statute does not in terms require it, it seems necessarily to follow that a certified copy of the order of the Court should be served at the same time on the trustees, as that is their only source of information as to the terms and conditions of the sale.

### **The Board of Missions of the Diocese of Albany.**

By chapter XIII. of the Laws of 1880 was incorporated "The Board of Missions of the Protestant Episcopal Church in the Diocese of Albany," with power to take, hold, and convey such estate, real and personal, as may be necessary or convenient for the purposes of said corporation, provided the yearly value or income of the same shall not exceed the sum of twenty-five thousand dollars.

By section 2 of the act, the objects of the association are defined as follows: "The objects of the said corporation shall be educational, charitable and religious, and also the control, care and management of the property and funds now provided, together with such property and funds as may be

hereafter provided, contributed to, or acquired by said corporation by purchase, gift, grant, devise or bequest, in trust or otherwise, and any accumulations thereof, for the organization, establishment and support of missions of said church in the Diocese of Albany. And also to take and hold property in manner aforesaid, both real and personal, which is or may be used or designed or intended to be used for the erection, maintenance, support, and care of Protestant Episcopal churches, parsonages, burial places, orphanages, missions, homes, halls, asylums, or other diocesan institutions or purposes in the said diocese, to the end that the same may be set apart, maintained and devoted in perpetuity or otherwise to the uses, purposes, and objects intended, and to take and hold, in manner aforesaid, any and all such property, both real and personal, as shall or may be conveyed to said corporation, or intended so to be, and to apply the same for any of the objects aforesaid; and to lease, convey, and dispose of the same, in accordance with any trust committed to it. And the said corporation may act as trustee in respect to any gift, grant, devise or bequest pertaining to the objects and purposes herein named, or either of them. And gifts, grants devises, and bequests, of both real and personal

property, may be made directly to the said corporation, or in trust to the same for any of the uses and purposes aforesaid."

The Board consists of the bishop, who is *ex officio* the president thereof, and of five clergymen and five laymen, usually elected by the Convention of the Diocese, who have power to fill any vacancy in their number, not occurring during a session of such Convention. The Board is also subject to the directions and must conform to the instructions of the Convention, if communicated in writing and entered on the journal of that body.

### **The Trustees of the Estate Belonging to the Diocese of Long Island.**

The Bishop and Standing Committee, by an act passed April 26, 1887, were incorporated under the above title, and by a law enacted May 17, 1872, were empowered "to take by grant, conveyance, devise or bequest, any estate, real or personal, upon trust for any church, society, or congregation belonging to the Protestant Episcopal Church in said Diocese, and hold, manage, transfer and convey the same for the uses and purposes of said church, society, or congregation; provided, however, that so

long as the title to any such property shall be vested in such corporation, the same shall be held and used only in conforming with the canons, rules, regulations, and usages of the Protestant Episcopal Church in said Diocese."

## CHAPTER IX.

### OF TAXATION.

“ EVERY building for public worship, every school-house and the several lots on which the same are situated, shall be exempt from taxation.”

*2 Rev. S. Banks & Bros., 7 Ed., 982.*

The term taxation as used above applies only to the general city and county taxes ; assessments for local improvements, whereby the church property is benefited and enhanced in value, may be made, and will become a lien upon it in the same manner and to the same extent as upon individual property.

A building used on Sundays for religious worship, and on week days when required, but on other days for public amusement and pecuniary profit, is not exempt from taxation.

*In re Camp-meeting Ass'n, 2 New England Rep., 915.*

If the legal title to the property used by the corporation for public worship is in another, although employed for religious purposes only, it is liable to be taxed.

*People v. Anderson, 4 West Rep., 142.*

The reason of the rule which subjects religious societies to taxation for local improvements is stated by Judge Breeze in *McLean Co. agt. Bloomington*, 106 *Ill. Rep.*, 209, as follows: "All the cases decided by this Court, so far as we have examined, hold that these special assessments are not taxes, for the reason, as plainly appears from the opinions delivered, that when laid in the ratio of benefit they are not burdens.

"It is this element which has reconciled the Court to their imposition, and induced the Court to range the power to make them under the power of eminent domain, the just compensation being the benefits flowing to the property from the improvements, and which are required to be estimated together with the damages. Nor can a case be found decided by this Court on principle variant from this, the equation of benefit and burden forming the groundwork of them all."

*Chicago v. Union*, 3 *West Rep.*, 97.

*People v. Mayor, etc.*, 2 *Hun*, 433.

Not only the church edifice, but, as incident thereto, a rectory, guild-house, or any other building used exclusively for the purposes of the church, will not be subject to taxation.

The exemption from taxation of the lot on which

the buildings are situated is not affected by the fact that a highway divides the lot wholly used for the same purposes into two portions, on one of which only the buildings are located.

*People v. The Comm., etc., 10 Hun, 246.*

In that case 103 acres used by the Academy of the Sacred Heart, although divided by a highway, and the buildings were all on one portion of it, was held to be exempt.

The size of the lot used in connection with the church is immaterial. The only question is, is it used exclusively for church purposes?

The exemption is absolute, and no discretion is given to the assessors to pass upon it.

*Temple Grove Seminary v. Cramer, 10 Abb. N. C., 424.*

Lands set apart for the erection of a church are not exempt until the building is actually commenced. "The law," says Judge Roosevelt, "to warrant this claim of privilege, requires an actual building—a house made with hands—not eternal in the heavens, but temporal, situated on temporal lots, resting not on intention, however pious or praiseworthy, but on solid, sublunary earth."

*Trinity Church v. Mayor, 10 How. Pr., 138.*

The personal property of every minister of the



gospel is exempt from taxation; also his real estate, provided that such real and personal estate does not exceed \$1,500.

*2 Rev. St., 982.*

The entire amount of the exemption for both realty and personalty is limited to that amount, and any property of whatever kind owned by a clergyman in addition to \$1,500 is subject to taxation.

A priest, or minister of the gospel, to sustain an action against the assessors for assessing him, must not only show that he was such, but that the property assessed was within the exemption, *i.e.*, that the value of both his real and personal property did not exceed \$1,500. He is liable to be taxed for the excess.

*Prosser v. Secor, 5 Barb., 607.*

Regularly ordained clergymen are exempt from taxation irrespective of the question whether they are actually engaged in their calling.

*Opin. Att'ys Gen., 1845, p. 147.*

But a minister or priest who has wholly abandoned the duties of his vocation, and engaged in secular pursuits, is liable to taxation, although he holds a license to preach.

*Barhyte v. Shepherd, 35 N. Y. R., 238.*

But if there is any question on the subject, the assessors act judicially, and their decision will not be reviewed.

*Id.*

It is well settled that supernumerary or superannuated clergymen, not engaged in worldly business, who, from age or poor health, are unable to do effective service, are entitled to the exemption.

Licentiates, or those not regularly ordained, are not exempt.

*Opin. Att'ys Gen., 148.*

Parishes in the State of New York are subject to the collateral inheritance tax prescribed by chap. 713, Laws of 1887, which requires the payment to the County Treasurer of 5 per cent. on all moneys bequeathed or property given by will to the corporation.

*Catlin v. Trinity College, 113 N. Y. R., 133.*

## CHAPTER X.

### OF PUBLIC WORSHIP.

THE Constitution of the State of New York provides that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind.

*Article 1, § 3.*

The principle is eloquently asserted in the Constitution of the State of Massachusetts, which declares that "it is the right as well as duty of men in society publicly and at stated seasons to worship the Supreme Being, the great Creator of the Universe. And no subject shall be hurt, molested or restrained in his person, liberty or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession or sentiments, provided he doth not disturb the public peace or obstruct others in their religious worship."

*Bill of Rights, Art. 2.*

This provision is enforced by the Penal Code of

New York, which prescribes (§ 272) that an attempt by means of threats or violence to compel any person to adopt, practice, or profess a particular form of religious belief is a misdemeanor.

Section 273 provides that a person who willfully prevents, by threats or violence, another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a misdemeanor.

Section 274 declares that whoever willfully disturbs, interrupts, or disquiets any assemblage of people met for religious worship, by any of the acts enumerated in the next section, is guilty of a misdemeanor.

The offense is defined by § 275, as follows :

“ 1st. Uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise, either within the place where such meeting is held or so near it as to disturb the order and solemnity of the meeting.

“ 2d. Engaging in or promoting within two miles of the place where a religious meeting is held, any racing of animals, or gaming of any description.

“ 3d. Obstructing, in any manner, without authority of law, within the like distance, free passage along a highway to the place of such meeting.”

Where a question of doubt exists as to the legal rights of rival claimants to the trusteeship of the property of a religious corporation, the claimants who have been in recognized possession will be sustained by injunction to prevent disorderly interference by their opponents until the legal right may be settled by an action, brought by the attorney-general in the name of the people.

*Reis v. Rohde*, 34 *Hun*, 161.

A person who disturbs public worship may be removed by the use of force sufficient for that purpose. No action will lie against the party ejecting him unless he has been guilty of using unnecessary violence.

*Hall v. Lee*, 34 *N. Y. R.*, 141.

The officers of the church may remove him (*Beckett v. Lawrence*, 17 *Abb.*, *N. S.*, 403), or the priest, and it is not necessary that the disturbance be willful in order to justify the ejection. If the person is guilty of disturbing the meeting and interrupting its order and decorum, then the application of such force as may be necessary to remove him may be justified.

Says Davis, J., in *Hall v. Lee*, *supra*: "I think there was also error in that part of the charge which

instructed the jury that the minister or priest had no greater right to use force than any other member of the congregation. In one sense, perhaps, this may be correct, namely, that any other member has equal right with the minister or priest to use force in removing a disturber of the peace and order of the meeting. But usage and custom have made it peculiarly the duty of the minister or priest to conduct the services of religious meetings; to preside over them, to preserve order therein, and act as the organ or spokesman of the congregation. \* \* \*

It is most appropriate that the minister or priest should preserve order and rebuke all violations of it. As the acknowledged presiding officer of the meeting, it is his duty to check all attempts to interrupt its order, quietness, and solemnity, and for this purpose he unquestionably has full power and authority to call upon others to aid him, or direct them to remove the offender. In this sense, therefore, he has a greater right to enforce order than any other member of the congregation."

And the intruder or disturber may be removed although religious services are not in actual progress.

The vestry in a free church may determine what pews or sittings shall be occupied by members of the congregation, and have the right to enforce the

same. They may request any person to vacate a particular seat, and have a legal right, however indecorous its exercise might be, to use sufficient force for that purpose.

*Sheldon v. Vail*, 28 *Hun*, 354.

A regulation prohibiting a person from leaving a church during divine service is unlawful, and may be disregarded.

*People v. Brown*, 1 *Wh. Cr. Cas.*, 124.

## CHAPTER XI.

### OF MARRIAGE, AND THE RECTOR'S DUTY IN CONNECTION THEREWITH.

By the law of the Church, Canon 13 of Title 2, §2, it is provided that "no minister knowingly, after due inquiry, shall solemnize the marriage of any person who has a divorced husband or wife still living, if such husband or wife has been put away for any cause arising after marriage; but this Canon shall not be held to apply to the innocent party in a divorce for the cause of adultery, or to parties once divorced seeking to be united again."

But the civil law, while it commits to every ordained clergyman the right to perform the ceremony of marriage, also imposes upon him certain duties, and requires—

1st. That the ceremony shall be according to the forms and customs of the church or society to which he belongs.

3 *R. S. Banks & Bro., 7 Ed., 2332.*

2d. It shall be his duty to ascertain, 1st. The Christian and surnames of the parties, their respec-



tive places of residence, and that they are of sufficient age to be capable in law of contracting marriage. 2d. The names and places of residence of two of the attesting witnesses if more than one be present, and if not, the name and place of residence of such witness.

He shall enter the facts so ascertained, and the day on which such marriage is solemnized, in a book to be kept by him for that purpose.

3 *R. S.*, 2333.

It need not be said that the clergyman owes no higher duty to the Church or the community than to be careful how he unites in an irrevocable bond parties who apply to him for that purpose unaccompanied by their parents or guardians.

It is his duty, unless their circumstances and position, character, and fitness to marry are well known to him, to make the most careful inquiries on the subject.

By the Laws of 1873, ch. 25, it is enacted that "if either of the parties is not personally known to him, he shall ascertain from the respective parties their right to contract marriage, and for that purpose he may examine the parties, or either of them, or any other person under oath, which he is hereby author-

ized to administer, which examination shall be reduced to writing and subscribed by the parties; and either of the respective parties making a false statement under this oath shall be deemed guilty of willful and corrupt perjury, and shall be liable therefor."

(For form of deposition, see No. 14.)

§ 12. "Every minister or magistrate who shall solemnize a marriage where either of the parties within his knowledge shall be under the age of legal consent, or an idiot or lunatic; or to which within his knowledge any legal impediment exists, shall be deemed guilty of a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried."

§ 13. Whenever a marriage shall have been solemnized within this State pursuant to this title, the minister or magistrate by whom the marriage was solemnized shall furnish, on request, to either party a certificate specifying—

1st. The names and places of residence of the parties married, and that they were known to such minister or magistrate, or were satisfactorily proved by the oath of the parties themselves, or of a person known to him, that they were the persons described

in said certificate, and that they were of sufficient age to contract marriage.

2d. The name and place of residence of the attesting witness or witnesses.

3d. The time and place of contracting such marriage.

The certificate shall also state that after due inquiry made there appears no lawful impediment to such marriage, and it shall be signed by the person making it.

(For form of certificate, see 13.)

An original certificate of a marriage within the State made by the minister or magistrate by whom it was solemnized; the original entry thereof made pursuant to law in the office of the Clerk of a city or town within the State, or a copy of the certificate, or of the entry duly certified, is presumptive evidence of the marriage.

*Code Civ. Pro.*, § 928.

There is no statute fixing the age at which parties may lawfully marry in this State. The common law rule is thus stated by Chancellor Kent, in 2 *Comm.*, 78: "No persons are capable of binding themselves in marriage until they have arrived at the age of consent, which by the common law of the land is fixed

at fourteen in males and twelve in females. The law supposes that the parties at that age have sufficient discretion for such a contract, and they can then bind themselves irrevocably, and cannot afterward be permitted to plead even their egregious indiscretion, however distressing the result of it may be.

It has been questioned, however, if this rule has not been changed by the Penal Code, which provides (§ 282) that a person who takes a female under the age of *sixteen* years, without the consent of her mother, father, guardian, or other person having legal charge of her person, for the purpose of marriage, is guilty of abduction, and punishable by imprisonment for not more than five years, or by a fine of not more than one thousand dollars, or both.

It is certain that the clergyman should decline to marry a woman under that age unless accompanied by her parents or guardian, as otherwise he may become involved in serious complications.

*Moot v. Moot, 37 Hun, 238.*

But as to the fitness of the groom for marriage, if over the age of fourteen years, he must exercise a sound discretion, as there is no law forbidding such marriage.

It would seem to be beyond question that as the solemnizing of marriage is an act of public worship, evidenced by the reading of God's word and prayer, and in large portions of Christendom considered a sacrament, it may, like any other act of devotion, be celebrated on the Lord's day.

It would be hardly necessary to give utterance to such an opinion, had not certain newspapers in Pennsylvania confidently asserted that marriages on Sunday are wholly invalid.



## SUPPLEMENT CONTAINING FORMS.

### (FORM NO. 1.)

#### NOTICE OF MEETING TO INCORPORATE SOCIETY.

Notice is hereby given that a meeting of the male persons of full age belonging to this church will be held on the — day of —, 18—, at — o'clock, in the —noon, in this place, for the purpose of incorporating themselves under the acts of the Legislature in such case made and provided; and to determine the name and title by which such church shall be known in law; on what day in Easter week an annual election for church wardens and vestrymen shall thereafter take place; what number of vestrymen, not less than four or more than eight, shall annually be elected to constitute, together with the rector, if there be one, and the two church wardens, the vestry of the church; and by a majority of votes to elect two church wardens and the number of vestrymen determined to be annually elected to serve until the next annual election.

---

### (FORM NO. 2.)

#### CERTIFICATE OF INCORPORATION.

To all to whom these presents may come, greeting: Know ye that we whose names are hereto subscribed do hereby certify: That on the — day of —, 18—, in pursuance of no-

tice for that purpose duly given, male persons of full age exceeding six in number belonging to the church or congregation, worshipping in —, in the city of —, county of —, and State of New York, and in communion with the Protestant Episcopal Church, not before incorporated, met at their said place of public worship for the purpose of incorporating themselves under the laws of the Legislature of the State of New York in such case provided, and doing the other acts therein directed to be done.

That the subscriber, the Rev. —, rector of such church (or —, a church warden, or a vestryman of such church, there being no rector), was called to the chair, and presided and received the votes.

That at such meeting — and — having received a majority of the legal votes cast for that purpose, were duly elected church wardens, and (*insert, giving full names*) were by a like majority of votes duly elected vestrymen.

That it was determined at such meeting, that the number of vestrymen to be annually elected should be —, and that the name or title by which such church or congregation should be known at law should be The —.

In testimony whereof, I, —, the said presiding officer, at said meeting, and we, — and —, electors, present during the same, have hereunto set our hands and seals the — day of —, 18—.

STATE OF NEW YORK, MONROE CO. [ss.]

On this — day of —, 18—, before me, the subscriber, personally appeared — and — and —, to me known to be the same persons described in and who executed the forego-



ing certificate, and severally acknowledged that they executed the same.

(The original must be recorded in the office of the Clerk of the County wherein the church is located, and a copy should be entered in the book of minutes of the vestry.)

---

(FORM NO. 3.)

NOTICE OF SUBSEQUENT ELECTION.

Notice is hereby given that an election for church wardens and vestrymen of this church will be held in the Sunday-school room (or other suitable place), on the — day of —, 18—, immediately after morning service, which will be held at — o'clock, A.M., the polls to remain open one hour, or longer if required.

---

(FORM NO. 4.)

St. — Church, Easter Monday, 188—.

At a meeting of the electors of said church, of which notice was duly given, according to law, held at the place above named, on Easter Monday, 18—, at 9.30 A.M., to elect wardens and vestrymen, I, the rector, Rev. Dr. —, (or —, one of the wardens of said church,) presided at such meeting, and received said vote; that the polls were kept open for one hour; that the following named persons, having received a majority of all the votes cast, were declared duly elected wardens and vestrymen for the ensuing year:

For wardens (*insert full names*).

For vestrymen (*insert full names*).

In witness whereof, I, —, the presiding officer, and —, and —, electors present at said election, have hereunto set our hands the — day and year first above written.

(The form for filling a vacancy is, with obvious changes, the same.)

---

(FORM NO. 5.)

PETITION FOR CHANGE OF NAME.

As the County Court is always open, it may be more convenient to apply to that tribunal.

MONROE COUNTY COURT :

In the matter of the petition of the Rector,  
Church Wardens, and Vestrymen of St.  
Mark's Church, for permission to change  
the name of said corporation.

*To the Judge of said Court :*

The petition of the Rector, Church Wardens and Vestrymen aforesaid respectfully shows that your petitioners are a corporation duly incorporated under and by virtue of the laws of the State, in communion with the Protestant Episcopal Church in the United States of America, and as such corporation located in the city of —.

That there is another religious body connected with the German Lutheran Church bearing the same name, which has also a place of worship in said city ; that by reason of such similarity of names, the title of your petitioner has become in-

convenient by reason of said churches being mistaken one for another.

That at a meeting of the duly qualified electors of said St. Mark's Episcopal Church, duly called for that purpose, and held at —, on the — day of —, 18—, a resolution reciting the expediency of changing the name aforesaid to the Rector, Wardens, and Vestrymen of St. Matthew's Church, in the city of —, was unanimously adopted, and the Rev. —, rector of said church, was authorised and directed to present a petition for that purpose to this honorable Court.

Your petitioners therefore pray that they may, by an order of the Court, be permitted to assume the corporate name of the Rector, Church Wardens, and Vestrymen of St. Matthew's Church in the city of —.

Dated, —.

STATE OF NEW YORK, — COUNTY, ss.:

—, being duly sworn, says that he is the Rector of St. Mark's Episcopal Church in the City of —, in said county; that he has read the foregoing petition, and that the same is in all respects true.

Sworn to before me this — day of —, 18—.

---

(FORM NO. 6.)

At a term of the — County Court, held at the Court House in the city of —, in said county, on the — day of —, 18—. Present, Hon. —, Judge of said Court.

In the matter of — (etc., as in petition).

Upon reading and filing the petition of —, Rector of said

Church, whereby it appears that the same is a corporation duly incorporated under and by virtue of the laws of this State, that the said corporate name has become and is inconvenient (or other reason) :

Now therefore, on motion of —, Attorney for said corporation, it is hereby ordered that upon compliance with the provisions of the Revised Statutes, and of Chapter 323 of the Laws of 1853, and of Chapter 464 of the Laws of 1847, the said corporation be authorized to assume the name of the Rector, Church Wardens and Vestrymen of St. Matthew's Church in the City of —, and from and after the — day of — next, be known by such new and assumed name, and no other.

And it is further ordered that this order be printed once in the —, a newspaper published in said city.

(The order must be published, within ten days after it is granted, in a public newspaper of the county in which the church is located (one insertion will be enough), and within twenty days thereafter the petition, affidavit, order, and proof of its publication filed and recorded in the office of the Clerk of the County wherein the Church is located.)

---

(FORM NO. 7.)

PETITION FOR SALE OF LANDS.

MONROE COUNTY COURT :

In the matter of the petition of the Rector, Church Wardens and Vestrymen of St. — Church, Rochester, for leave to sell real estate.
---

The petition of —, of Rochester aforesaid, respectfully shows that your petitioner is Clerk of the Vestry of said Church ; that on or about the — day of —, 18—, said Rector, Church Wardens and Vestrymen were duly incorporated as a religious corporation under the name aforesaid ; that on or about the — day of —, 18—, they became seized in fee of premises consisting of one lot of land in said city of Rochester, bounded and described as follows, to wit :

All that tract or parcel of land situate

*(Particularly describe the premises.)*

That they caused to be built a rectory on said premises, which has ever since been used for the residence of the rector of said church, and which is of the value of about \$10,000.

That, owing to circumstances beyond their control, they have become indebted to various individuals in the sum of about \$9,000 ; that some of the said creditors threaten to put their claims in judgment ; that said corporation has no other property except their church edifice, which is of the value of about \$20,000, and no means of satisfying said indebtedness except by a sale of the premises hereinbefore particularly described.

That at a meeting of the vestry of said church, duly called, and held on the — day of —, 18—, and at which were present the rector, two church wardens and six vestrymen, the following resolution was adopted by a unanimous vote (or by the vote of a majority of those present at said meeting), to wit :

Whereas, this church has incurred an indebtedness of about \$9,000, and we have no means of paying the same except by a sale of the rectory of said church and the lot on which the same is situate : Now, therefore, it is resolved that it is expe-

dient to sell said rectory lot for the purpose aforesaid, and that —, Esq., the clerk of this vestry, be, and he hereby is, authorized to apply to the Monroe County Court for an order directing the sale of said rectory property.

Your petitioners, therefore, pray that, by an order of this court, authority may be given to said corporation to sell said property, so described as aforesaid, and that said rector, wardens and vestrymen be authorized to make conveyance thereof for the purposes aforesaid.

—, Petitioner.

Form of verification as in No. 5 above, substituting word clerk for rector.

---

(FORM NO. 8.)

ORDER OF SALE.

At a term of the — County Court, held at the Court House in the city of —, in said county, on the — day of —, 18—.

Present, Hon. —, Judge of said Court.

In the matter of —, {  
(as in petition). }

Upon reading and filing petition of —, clerk of the vestry of St. — Church, whereby it is shown to be expedient and necessary for the said corporation to sell and dispose of its rectory property, which is bounded and described as follows :

*(Here describe it.)*

and the said clerk was duly authorized by said vestry to make said application.

Now, therefore, on motion of —, attorney for said petitioner,

it is ordered that said Rector, Church Wardens and Vestrymen, be, and they are hereby authorized and directed to sell the premises aforesaid, for the best price which can be obtained therefor, and to make and execute any and all necessary and proper deed or deeds for that purpose.

---

(FORM NO. 9.)

AGREEMENT FOR CONSOLIDATION.

Agreement made this — day of —, 18—, by and between the Rector, Church Wardens and Vestrymen of St. George's Church, in the City of New York, of the first part, and the Rector, Church Wardens, and Vestrymen of the Church of the Intercessor, of the second part, witnesseth :

That said parties covenant and agree to and with each other, that said religious corporations shall unite and consolidate, upon the following terms and conditions, to wit :

1st. The name of the new church or corporation so to be formed by the consolidation of the parties as aforesaid, shall be known and distinguished as the Rector, Church Wardens and Vestrymen of the Church of the Messiah, and shall belong to the Protestant Episcopal Church.

2d. The following named persons shall act as church wardens and vestrymen of said Church of the Messiah until the first annual election of the proposed new corporation, which shall take place immediately after Morning Prayer, on Easter Monday in each year.

3d. The place of worship of said united congregations shall be the church edifice, heretofore used by the said party of the — part.

Witness the hands of the rector and clerk of said respective parties, thereunto duly authorized, and the official seal of each of said corporations, the day and year first above written.

[L.S.]

[L.S.]

[L.S.]

[L.S.]

STATE OF NEW YORK, } ss.  
 ——— COUNTY, }

On this — day of —, 18—, before me, the subscriber, personally appeared —, to me known, who being by me duly sworn, did depose and say that he resides in — in said county; that he is the clerk of the vestry of said St. George's Church, of the city of —; that by a resolution of said vestry duly adopted by a majority (or unanimous) vote of those present at a meeting duly called for that purpose, he and said — rector, were on the — day of —, 18—, duly authorized and instructed to execute the foregoing instrument on behalf of said vestry; that he and said — rector did, by virtue of said resolution, sign the same on the day of the date thereof; that he knows the corporate seal of said vestry, and that he at the same time by the like authority affixed the same to the instrument aforesaid.

——, Notary Public.

Same form of proof as to the execution by the other party.

A duplicate of the agreement must then be presented to the Bishop and Standing Committee of the Diocese for their approval, and may be approved by them in the following form :  
 (No. 10.)

We —, the Bishop of the Diocese of Western New York, and —, constituting a majority of the Standing Committee of



said diocese, hereby express our approval of the within agreement, and consent to the union and consolidation therein named.

Dated —, \_\_\_\_\_

(FORM NO. 10.)

PETITION FOR CONSOLIDATION.

SUPREME COURT.

In the matter  
of

The Petition of the Rector, Church Wardens  
and Vestrymen of St. George's Church,  
to unite and consolidate with the Rector,  
Church Wardens and Vestrymen of the  
Church of the Intercessor.

The petition of the rector, church wardens and vestrymen of St. George's Church, in the city of —, respectfully shows :

That your petitioners are a religious corporation duly incorporated under and by virtue of the laws of the State of New York :

That on the — day of —, 18—, your petitioners made and executed a petition, in writing, with the rector, church wardens and vestrymen of the Church of the Intercessor, of the same city, of which the following is a copy :

*(Here insert agreement.)*

That said agreement has received the sanction and approval of the Bishop and Standing Committee of the diocese of —.

That the reason of making said agreement was that within the territorial limits of the parishes in which said corporations are located there are not a sufficient number of Episcopalians to sustain both of said corporations, and that in consequence the income of your petitioners derived from revenues of said St. George's Church, for some time past, has not been equal to their expenditures in conducting the worship of the same.

That Schedule "A," hereto annexed, contains a true statement of the real and personal property of said corporation.

That Schedule "B," hereto annexed, contains a particular statement of the indebtedness and liabilities of said corporation.

That said corporation has no income except such as is derived from the rental of its pews and its weekly offertory, which amounted during the year just closed, to about the sum of \$——.

Wherefore, your petitioners pray for the order of this Court authorizing and directing them to form a union and consolidation with the rector, church wardens and vestrymen of said Church of the Intercessor, upon the terms and conditions specified in the agreement beforesaid.

(Signed by the rector, church wardens and vestrymen, and verified by the rector as in No. 5 above.)

---

(FORM NO. 11.)

ORDER OF CONSOLIDATION.

At a term of the Supreme Court, held at the Court House in —, in and for the county of —, on the — day of —, 18—.

Present, The Honorable ———, Justice.

In the matter

of

The Petitions of the Rector, etc., of St.  
George's Church, and of the Rector, etc.,  
of the Church of the Intercessor, asking  
to be united and consolidated.

Upon reading and filing the petition of the rector, church wardens and vestrymen of St. George's Church, in the city of ———, and also the petition of the rector, church wardens and vestrymen of the Church of the Intercessor, in said city, each asking, for reasons set forth in said petitions, that said corporations be united and consolidated, and also setting forth that an agreement between said corporations has been duly executed by and between each of them to and with the other for that purpose, of which said agreement the following is a copy :

*(Here insert copy of agreement.)*

Each of which petitions also sets forth that such an agreement has received the approval of the Bishop and Standing Committee of the diocese in which said corporations are located, and also contains a statement of the indebtedness of the corporation and all its property, and the amount and sources of its annual income.

Now, therefore, on motion of ———, attorney for said petitioners, it is hereby ordered that said religious corporations be and the same hereby are united and consolidated into one

corporation, to be known and distinguished as St. — Church, in the city of —, with the rights and powers, duties and obligations provided by law and upon the terms and conditions mentioned in the agreement aforesaid.

The statute provides that upon entering this order with the clerk of the court granting it, in the county where such corporations are located, all the estates, rights, and property of whatsoever nature, belonging to either of said corporations, shall, without further act or deed, be vested in and transferred to the new corporation as effectually as they were vested in or belonged to the former corporations, and the said new corporation shall be liable for all the debts and liabilities of the former corporation in the same manner and as effectually as if said debts or liabilities had been contracted or incurred by it.

---

(FORM NO. 12.) .

CERTIFICATE OF CHANGE IN NUMBER OF VESTRYMEN.

To all to whom these presents shall come : We whose names are hereto subscribed, do certify that on the — day of —, 18—, at a regular meeting of the rector, church wardens and vestrymen of — Church, Rochester, in the State of New York, held at the rectory of said church, at which were present the rector, church wardens, and vestrymen, the following resolution was unanimously adopted, to wit :

*Resolved*, That it is expedient that the number of persons to officiate as vestrymen of — Church in the City of —, be changed to — ; that notice was given by the rector of such church in the time of divine service on two Sundays next pre-

vious to Easter Monday, —, 18—, that an election of wardens and vestrymen of said church would be held on the day last aforesaid, immediately after Morning Prayer at the chapel of said church, at 9.30 A.M. on that day, and that said resolution would be then and there submitted to the electors qualified to vote at said election for their approval or rejection; that at an election duly held in pursuance of such notice, a vote was taken for that purpose, and said resolution was unanimously adopted.

In witness whereof we, —, rector of said church, and —, two electors present at said meeting, have hereunto set our hands and seals this — day of —, 18—.

[L.S.]

[L.S.]

[L.S.]

(Form of acknowledgment as in No. 2.)

---

(FORM NO. 13 )

CERTIFICATE OF MARRIAGE.

I, —, a duly ordained clergyman of the Protestant Episcopal Church residing in the city of New York, and rector of St. James' Church, therein, do hereby certify that on the — day of —, 18—, at the rectory of said church (or at No. — — Street, in said city, or in said Church), I united in marriage John James Doe and Mary Jane Roe, both of whom are residents of said city, and who were known to me (or satisfactorily proven to me) to be the identical persons herein above named, and of sufficient age to contract marriage; that the attesting witnesses present at such marriage were — and —, who reside in said city of New York; that after due inquiry made

for the purpose, there appeared to be no legal impediment to such marriage.

Witness my hand at —, this — day of —, 18—.

(FORM NO. 14.)

DEPOSITION OF APPLICANT FOR MARRIAGE.

STATE OF NEW YORK, }  
MONROE COUNTY, } ss.

The deposition of —, who, being by me duly sworn, doth depose and say as follows : I have applied to Rev. —, to be by him united in marriage to —, who resides in the — of —, in said county. My age is — years ; I reside at No. —, in the — of —, in the State of —. I have never been married (or I was once married to —, but was lawfully divorced from him on or about the — day of —, 18—, on the ground of his adultery). I know of no legal impediment to my marriage.

(Signed by applicant.)

The foregoing deposition was by me carefully read over to said witness, and by him subscribed in my presence this — day of —, 18—.

—, Rector, etc.

(FORM NO. 15.)

NOTICE OF MEETING TO CONVEY PROPERTY TO TRUSTEES  
OF THE PAROCHIAL FUND.

Notice is hereby given that at a meeting of the vestry of this church held at the rectory on the — inst., the following resolution was unanimously adopted :

*“Resolved,* That it is expedient to convey our church edifice and rectory, and the lands on which the same are situate, to the Trustees of the Parochial Fund of the Protestant Episcopal Church in the Diocese of Western New York.”

A meeting of members of this society entitled to vote for church wardens and vestrymen thereof will be held in this church on the — day of — next, to take action on such resolution, and to determine whether the same shall or shall not be ratified and confirmed.

---

(FORM NO. 16.)

CERTIFICATE OF THE ACTION OF THE ELECTORS AT THE  
MEETING CALLED BY SUCH NOTICE.

We, —, rector of — Church, who presided at the meeting hereinafter named, and — and — and —, three electors present at said meeting requested by said rector to unite in this certificate, do hereby certify that a meeting of the duly qualified electors of said society was this day held in the church building in pursuance of notice given and posted, as required by law, to take action upon a resolution of the vestry of said church, passed at a meeting thereof duly called, held on the — day of —, 18—, of which notice the following is a copy :

*(Insert notice as in preceding form.)*

That said Rev. — presided at said meeting, and said — and — and —, who are electors of said church, were present at the same.

That fifty ballots were cast at such meeting, of which forty

were cast "for the resolution of the vestry," and ten were cast "against the resolution of the vestry."

In witness we, said presiding officer and said electors, have herewith set our hands and seals this — day of —, 18—.

(Form of acknowledgment as in No. 2 above.)

---

(FORM NO. 17.)

OF DEED TO TRUSTEES.

This indenture, made this — day of —, 18—, by and between the Rector, Wardens and Vestrymen of — Church, in the city of Rochester, county of Monroe, and State of New York, of the first part, and the Trustees of the Parochial Fund of the Protestant Episcopal Church in the Diocese of Western New York, of the second part, witnesseth that, whereas, on the — day of —, 18—, a certificate was made by Rev. —, rector of said church and — and —, and —, electors thereof showing that,

*(Here set forth the recitals of the certificate.)*

Now, therefore, in consideration of the premises, and of the sum of one dollar to said party of the first part duly paid, said party of the first part hath sold, granted and conveyed, and doth hereby sell, grant and convey to said party of the second part all that tract or parcel of land situate,

*(Here describe it.)*

with the appurtenances, to have and to hold the same for the use and benefit of said party of the first part. In witness whereof said parties of the first part have hereunto set their



hands and affixed their corporate seal the day and year first above written.

(Signed by Rector and Clerk.)

(Form of acknowledgment or proof as in No. 9 above.)

---

(FORM NO. 18.)

THE PETITION FOR CONVEYANCE OF REAL ESTATE BY  
TRUSTEES OF PAROCHIAL FUND.

SUPREME COURT.

In the matter of the petition

of

The Rector, Wardens and Vestrymen of  
— Church, in the City of —, that the  
trustees therein named convey the lands  
held by them in trust for said petitioners.

To the Justices of said Court :

Your petitioners respectfully show that they are a religious corporation duly incorporated under and by virtue of the laws of the State of New York ; that on the — day of —, by their indenture duly made for that purpose, in pursuance of chapter 124 of the Laws of 1884, they conveyed, with other property, to the Trustees of the Parochial Fund in the Diocese of Western New York their rectory property, consisting of one small house and lot, which is bounded and described as follows :

*(Here describe such property.)*

That by reason of the insufficiency of said house and lot for the accommodation of the rector of said church, and by reason that your petitioners have the means, together with what can be raised from the sale of said present rectory, to build a new, larger, and more commodious residence for said rector, it was, at a meeting of your petitioners, duly called for that purpose, determined by unanimous resolution that it is expedient and desirable to sell said rectory lot for the purpose aforesaid, and that a meeting of members of the congregation duly authorized to vote therefor be called to consider the propriety of adopting said resolution.

That in pursuance of such action as aforesaid notice was given and posted as required by law that such meeting would be held at the place of worship of said church on the — day of —, 18—, at which time such meeting was held, and the question embodied in such resolution was submitted to the voters there present, and twenty-five lawful votes were cast in favor of and ratifying such resolution, and none against it ; a certificate of which said action, duly acknowledged, has been recorded in the office of the Clerk of the County of —, a copy of which is hereto annexed and made part of this petition.

Your petitioners therefore pray for an order of this Honorable Court authorizing and directing the Trustees of said Parochial Fund to sell and convey the property herein above particularly described, and the proceeds pay to your petitioners for the purpose of building a new rectory aforesaid.

(Verification as in No. 5 above.)

## (FORM NO. 19.)

ORDER FOR SALE IN PURSUANCE OF THE FOREGOING  
PETITION.

At a term of the Supreme Court held in the Court House of the City of —, in and for the County of —, on the — day of —, 18—.

Present, Hon. — —, Justice.

(*Title.*)

Upon reading and filing the petition of the rector, wardens and vestrymen aforesaid showing that they are a religious corporation; that on the — day of —, 18—, they conveyed by their deed dated on that day, to the Trustees of the Parochial Fund of the Protestant Episcopal Church in the Diocese of Western New York, the premises herein described as follows :

(*Here describe them.*)

That said deed was duly recorded in the office of the Clerk of — in Liber — of Deeds at p. —, and it appears to the Court that there are good reasons for granting the prayer of said petition, and that said petitioners have complied in all respects with the provisions of § 8, chapter 124 of the Laws of 1884. In and by which said petition, said petitioners pray that the trustees aforesaid may be required to sell said premises and pay the proceeds thereof to said petitioners for the purposes therein mentioned.

Now, therefore, on motion of —, attorney for said petitioners, it is ordered that said Trustees of the Parochial Fund aforesaid sell and convey said property for the best price which can be obtained for the same, and the proceeds pay to said petitioners for the uses and purposes mentioned and set forth in said petition.



## INDEX.

---

### A.

- Advantages of incorporation, 1.
- Age at which marriage may be contracted, 90.
- Albany, Board of Missions of Diocese of, 74.
- Assistant minister, 35.
- "Associate rector" an exceptional office, 36.
- Attendance at church to qualify elector, 13.

### B.

- Book to be kept by rector, 15.

### C.

- Call to rector, how extended, 27.
- Certificate of incorporation, 93.
  - How executed, 11.
  - Form of, 93.
- Certificate of marriage, when required, 90.
  - Form of, 107.
- Certificate of election, 15.
  - Mode of execution, 15.
  - Form of, 95.
- Central New York, Trustees of Diocese, 66.
- Change of name, how effected, 57.
- Choir under rector's control, 35.
- Church property managed by vestry, 20.
- Church buildings controlled by rector, 33.

- Consolidation of corporations, 59.
  - How effected, 60.
  - Agreement for, 59.
  - Petition for, 60.
  - Order for, 60.
  - Form of petition and order, 101.
- Congregation, when to be consulted, 57.
- Conveyance of realty, when authorized, 47.
  - How made, 48.
  - Forms for, 111.

## D.

- Deposition, when rector may require, 89.
  - Form of, 108.
- Dismissal of minister instituted by congregation only, 29.
- Duty of rector in general, 37.
  - As to marriage, 88.
  - As presiding officer at first meeting, 6.

## E.

- Election of wardens and vestrymen, 13.
  - When held, 14.
  - Where held, 5.
  - How conducted, 6.
  - Notice of, 13.
  - Form of notice, 95.
  - Who may vote at, 13.
  - First. See *Incorporation*.
  - Special to fill vacancies, 17.
- Enforcement of right of freedom of worship, 83.
- Evidence, return of rector as, 15.

## F.

- Form of certificate of marriage, 107.
  - Election, 95.
  - Incorporation, 93.
- Form of petition to change name,
  - Order to change name, 96.

- Form of petition to sell realty, 98.
- Order to sell realty, 100.
- Petition to consolidate parishes, 103.
- Agreement to consolidate parishes, 101.
- Order to consolidate parishes, 104.
- Petition to change number of vestrymen, 56.
- Order to change number of vestrymen, 106.
- Notice of first meeting, 97.
- Notice of subsequent meeting, 95.
- Lease of pew, 50.
- Conveyance of land, 100.

## G.

- Guaranty of religious worship by constitution, 83.
- Good faith required of vestrymen, 23.

## I.

- Incorporation of parish, 1.
  - How effected, 11.
  - How noticed, 12.
  - Advantages of, 1.
  - Who may be corporators, 3.
- Illegal votes, receipt of, 8.
  - When will not vitiate election, 8.

## L.

- Lands, sale of, by vestry when ordered, 47.
  - Proceedings for that purpose, 48.
  - Power to petition belongs to vestry, 49.
  - What will authorize conveyance, 47.
  - Must be for interest of corporation, 47.
  - How authorized, 47.
  - Petition for that purpose, 48.
  - Its contents, 48.
  - How varied, 48.
  - Form of petition, 98.
  - Form of order, 100.
  - Form of conveyance, 111.

## M.

- Majority of vestrymen, what constitutes, 41.  
Marriage, must be according to church forms, 88.  
    Rector's duty in respect to, 89.  
    What he must ascertain, 89.  
    Duty of caution, 89.  
    Book to be kept, 89.  
    Deposition may be required, 89.  
    Form of, 108.  
    When celebration a misdemeanor, 90.  
    Certificate to be furnished, 90.  
    Form of, 107.  
    Age at which marriage may be contracted, 92.  
Meetings of vestry. See *Vestry Meetings*.  
    For incorporation, when and how held, 6.  
Mortgage, power of vestry to mortgage lands, 48.

## N.

- Name, change of, how accomplished, 57.  
Notice of meeting for incorporation, 4.  
    Elections, 13.  
    Vestry meetings, 38.  
    Special election, 17.  
Number of vestrymen, how changed, 56.  
    Resolution to be submitted to electors, 56.  
    Proceedings, how conducted, 56.  
    Forms for, 106.

## O.

- Offence of disturbing religious worship defined, 85.  
Office of wardens and vestrymen lasts until successors elected, 11.

## P.

- Polls, how long kept open, 10.  
Posting of notice for first meeting, 4.  
Powers of rector, 27.  
    Trustees of Parochial Fund, W. N. Y., 64.  
    Trustees of Diocese of Albany, 74.  
    Trustees of Diocese of Central N. Y., 66.



Powers of trustees of Diocese of Long Island, 76.

Vestry to call rector, 18.

Vestry to fix his salary, 18.

Vestry to use common seal, 19.

Vestry to sue and be sued, 21.

Vestry over temporalities, 21.

Vestry to make rules, 24.

Vestry to appoint minor officers, 22.

Vestry to petition to sell realty, 48.

Pews under control of vestry, 49.

How rented, 50.

Short form of lease, 50.

Rights of pew owner, 51.

His interest usufructuary only, 51.

His right gone if alteration of church requires demolition of pew, 52.

When his rights will be protected, 54.

How conveyed, 51.

Nature of his interest, 54.

A right to occupy only, 51.

## Q.

Qualifications of electors at first meeting, 3.

Electors after meetings, 13.

Wardens, 11.

Vestrymen, 11.

Questions to be submitted at first meeting, 9.

Quorum, what constitutes, 40.

## R.

Realty. See *Lands*.

Rector, the, constituent part of vestry, 27.

Powers of, at first meeting, 6.

Powers of, at subsequent meetings, 27.

Powers of at vestry meetings, 27.

Right to vote, 31.

Called for life, 27.

Salary may not be diminished, 29.

- Rector, the, power over church buildings, 33.
  - Power over assistant minister, 35.
  - Power over church music, 34.
  - Presiding and returning officer, 32.
  - Can be dismissed only by congregation and bishop, 27.
  - His right to be heard, 31.
  - His duty generally, 33.
  - His duty as to marriage, 88.
  - The law extends him peculiar protection, 27.
- Resignation of vestryman invalid unless accepted, 16.

## S.

- Seal, common power to use, 19.
  - What constitutes, 19.
  - When required, 20.

## T.

- Taxation, what church property exempt, 78.
  - Liable for local improvements, 78.
  - To what extent clergy exempt, 80.
- Time of keeping polls open, 10.
- Trustees of church property, 62.
  - How elected, 70.
  - The act of organizing them, 62.
  - Of Parochial Fund in W. N. Y., 64.
  - Powers and duties of, 63.
  - Of Diocese of Central New York, 66.
  - Of Diocese of Albany, 74.
  - Of Diocese of Long Island, 76.

## V.

- Vacancies, how created, 16.
  - Special election to fill, 17.
  - Vestry must order, 17.
- Vestry, how first vestry elected, 9.
  - How subsequent vestries elected, 13.
  - Rector constituent part of, 27.
  - Must order special election, 17.

**Vestry, what constitutes, 18.**

- Trustees of church property, 18.
- Power over temporalities, 20.
- Good faith required of, 21.
- Power to make rules, 22.
- Power to appoint minor officers, 22.
- Power to call and induct rector, 18.
- Power to hold and manage property, 20.
- May not dismiss rector, 28, 43.
- Meetings, how called, 38.
- Meetings, how conducted, 42.
- Meetings, how organized, 43.
- Five vestrymen and one warden must be present, 40.
- Action of majority necessary, 41.
- Can only act at meetings regularly called, 41.
- Withdrawal after meeting organized, 43.
- Power as to sale of lands, 47.
- Power to mortgage, 48.
- Power as to pews, 49.
- Hold office until successors legally elected, 11.

**Vestrymen, qualifications of, 10.**

- Change of number, 56.

**Votes, illegal, when will not vitiate election, 8.**

- Unchallenged, cannot be questioned, 8.

**Voters, qualifications of, at first meeting, 7.**

- Qualifications of, at after meetings, 13.

**W.****Wardens, qualifications of, 10.**

- Proceedings to recover property in name of rector, wardens, and vestrymen, 21.

**Worship, of religious, 83.**

- Freedom of, 83.
- Freedom of, how enforced, 83.
- Disturbing, 85.
- Who may regulate, 86.











